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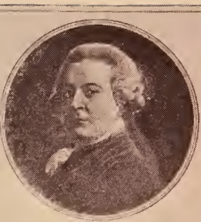

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A METHODICAL
SYSTEM
OF
Univerſal Law:

OR, THE
LAWS *of* NATURE *and* NATIONS

DEDUCED
From CERTAIN PRINCIPLES, and applied
to PROPER CASES.
Written in *Latin* by the CELEBRATED
JO. GOT. HEINECCIUS,
Counſellor of State to the King of PRUSSIA,
and Profeſſor of PHILOSOPHY at *Hall.*

TRANSLATED, and illuſtrated with NOTES and
SUPPLEMENTS,
By *GEORGE TURNBULL,* LL. D.

To which is added,
A DISCOURSE upon the NATURE and ORIGINE
of MORAL and CIVIL LAWS; in which they are deduced,
by an Analyſis of the human Mind in the experimental Way,
from our internal Principles and Diſpoſitions.

Natura enim juris ab hominis repetenda natura eſt. CIC.

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THE LAWS OF NATURE *and* NATIONS *deduced*, &c.

BOOK II.

Of the LAW *of* NATIONS.

CHAP. I.

Concerning the natural and ſocial ſtate of man.

Sect. I.

The connection.

HITHERTO we have conſidered *the law of nature*, by which the actions of particulars ought to be regulated. Now, the next thing to be done in this undertaking, is to deduce *the laws of nations* from their principles, and to give a compendious view of them. This we promiſed (l. 1. § 23). But ſince *the law of nations* is the law of nature, applied to ſocial life, the affairs of ſocieties, and of independent political bodies (l. 1. § 21), we cannot treat of it diſtinctly, without firſt giving a clear notion of what we call *ſtates* and *ſocieties*.

Sect. II.

Of man's phyſical and moral ſtate.

State in general means the quality which conſtitutes a particular thing, or makes it what it is; and thus the qualities conſtituting man are rightly ſaid to make *his ſtate*. Now, we may either conſider man merely as conſiſting of certain faculties of body and mind with which he is endowed by his Creator, or we may conſider him as ſubjected to laws for the regulation of his free actions. The firſt way of conſidering man is called *conſidering him in his phyſical ſtate* *. The ſecond is *conſidering him as a moral being*, or *in his moral ſtate.* But in treating of the law of nations, the objects of which are mens free actions, it is evident, that it is not merely man's phyſical, but more directly his moral ſtate, which then falls under conſideration.

Sect. III.

What is meant by a natural, and what by an adventitious ſtate.

This *moral ſtate*, by which men are ſo greatly diſtinguiſhed, is either cogenial to them, or it depends upon ſome deed of ours. The firſt is called *natural*; the other *adventitious.* Wherefore the *natural ſtate* of man is that quality or condition impoſed upon man by nature, without any deed of his, by which our free actions are ſubjected to, and limited by a natural law, ſuitable to the nature of that ſtate. The *adventitious ſtate* of man, on the other hand, is a quality or condition which man brings himſelf into by his own deed, in conſequence of which his free actions are ſubjected to, and limited by a natural law, ſuitably to the nature and exigencies of that ſtate *.

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* Thus it is by regulations ariſing from the will of the Creator, that men are male and female, that ſome have well formed, and others diſtorted bodies; that ſome have a ſtrong and robuſt, others a weakly and feeble conſtitution; that ſome are beautiful, and others deformed; and which is more, that ſome have a very quick and vigorous apprehenſion, an univerſal penetrating genius, while others are exceeding ſlow and dull, and have no capacity almoſt for any thing. All theſe differences, it is plain, belong to the *phyſical* or *natural* ſtate of man, as it is called by the civilians. On the other hand, the free actions of man are differently limited, if he be a husband, from what they are, if he live in celibacy; differently according to the different perſonages or characters one bears, as of a parent, or a child, a maſter or a ſervant, &c. For which reaſon, all theſe differences are referred to the *moral ſtate* of man, which is called by civilians his *civil ſtate.* But let it be obſerved, that the moral ſtate of man extends a little farther than what they call the civil ſtate, to which they only refer the *ſtate of liberty*, *citizenſhip*, *and a family ſtate.*

* And in conſequence of theſe limitations, both ſtates give men certain rights, and oblige them to certain duties: Thus certain duties belong to thoſe who live in a ſtate of nature, and other duties belong to husbands and wives, others to parents and children, others to maſters and ſervants, and others to citizens. And therefore our definition of a ſtate comes to the ſame with that of Pufendorff, of the duties of a man and a citizen, 2. 1. 1. where he defines that ſtate to be in general, " a condition in which men are underſtood to be placed in order to a certain courſe of action, and which is accompanied with certain rights."

Sect. IV.

Natural ſtate is not oppoſed to the ſtate of brutes, nor to a ſtate contrary to nature.

We do not then oppoſe *a natural ſtate* to the ſtate of brutes, for the difference between our nature and that of the brutes belongs rather to our phyſical than our moral ſtate (§ 2); nor to what the Civilians call *a contra-natural ſtate*, ſuch as they have feigned the ſtate of ſlaves to be, § 2. Inſt. de jure perſ. but to a ſocial and a civil ſtate; both of which being impoſed upon men by themſelves, are equally adventitious. But what this ſtate is, ſhall be more accurately conſidered, and thereby it will appear, why ſo great a number of men, forſaking their natural ſtate, have put themſelves into other ſtates, attended with many and various uneaſineſſes.

* From this ſtate of mankind, by which their Creator hath ſo far exalted them above the brute creation, Pufendorff deduces certain duties of mankind, ibidem, § 3. " As that man ought to acknowledge his Creator and worſhip him, contemplate and admire his works, and live in quite a different manner from the brutes." Simplicius ad Epictet. c. 79. ſeems to have entertained much the ſame ſentiments, when he prays to God, " to keep him in mind of the dignity given to human nature, by his diſtinguiſhing favour." But we are obliged to all theſe duties, not becauſe we have received endowments ſuperior to

thoſe beſtowed on the brutes, but by the will of God, the ſole ſource of all moral obligation (l. 1. § 62), and conſequently, we have deduced all theſe duties from that principle (l. 1. § 126. § 149.)

Sect. V.

It is a ſtate of equality.

We have already obſerved (l. 1. § 88), that all men, tho' one may be more perfect than another, are however equal by nature. And who can call this into queſtion, ſince all men conſiſt of the ſame eſſential parts, body and mind? But hence it follows, that a ſtate of nature is a ſtate of equality; and conſequently, among thoſe who live in it, there is no ſuperior or inferior; and therefore in it empire and ſubjection, and diſtinction of dignities, have no place; ſo that Ulpianus juſtly ſays, "That by the law of nature all men are equal," l. 32. D. de reg. jur. l. 4. D. de juſt. & jure, l. 12. § 3. D. de accuſat. l. 64. D. de condict. indeb. *.

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* Merillius obſerv. 1. 15. obſerves, that all this is taken from the Stoics. And indeed many ſuch ſayings are to be found in their writings. See Arrian. ad Epict. 1. 13. Seneca, ep. 47. and of benefits, 3. 22. which paſſages are quoted by Merillius. But this principle was rather common to all philoſophers and poets, becauſe none could chooſe but admit it, who had conſidered human nature with any attention. To this purpoſe is that of Euripides in Hecuba, v. 291.

Lex enim vobis & liberis æqua
Et de ſervili ſanguine natis lata eſt.

And that fragment of Varro apud Nonium Marcell. 2. 98. "Natura in humanis omnia ſunt paria." Not to mention many other teſtimonies of ancient authors to the ſame purport.

Sect. VI.

And likewiſe of liberty.

But there being, in a ſtate of nature, no place for empire and ſubjection (§ 5), it muſt be a ſtate of liberty *; nor can either political ſubjection, or that ſervitude which is introduced by the law of nations, have place in it; ſo that in it there can be no poſitive laws, no magiſtrates, no poſitive puniſhments, nor none of thoſe things which ſuppoſe a certain prerogative in ſome above the reſt.

* *Liberty* is the faculty of acting according to our own will and pleaſure, and for our own advantage. And it is either *political* or *civil*, when one acknowledges no ſuperior, according to whoſe will, and for whoſe intereſt he is obliged to regulate his actions: Or *of the law of nations*, which they enjoy who are under the power of no maſter, to whoſe will they are bound to conform, and for whoſe intereſt they are obliged to act. To the firſt, which we called *political liberty*, *ſubjection* is oppoſite. To the other, which we called, *of the law of nations*, *ſervitude* is oppoſite. Thomaſius has added a third ſpecies of liberty, *viz.* *natural*, which is defined, § 2. Inſtit. de jure perſon. But we ſhall not here take any notice of it, ſince it belongs rather to the phyſical than the moral ſtate of mankind.

Sect. VII.

But the law of nature muſt have place, and be of full force in it.

Yet becauſe magiſtracy, and poſitive laws and puniſhments, have no place in this ſtate merely on account of the natural equality of mankind (§ 6), which reaſon does not at all affect that eternal law which is conſtituted by God himſelf; it is plain that the actions of men, even in a ſtate of nature, are ſubject to the law of nature; and thoſe who live in that ſtate, are no leſs bound than we who have put ourſelves into adventitious ſtates, to love and obey God, to love, preſerve, and perfect ourſelves, and to love other men as ourſelves; to do no injury to any one, but to render to every one his own, and to all the duties of humanity and beneficence *.

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* And this is the chief argument by which we above exploded that firſt principle of *ſociality*, laid down by Pufendorff (l. 1. § 75). This learned author derives the law of nature from our obligation to ſociality, to which men are compelled by neceſſity itſelf. But man would be under

obligation to perform duties to God and to himſelf, tho' he were not united by any ties with other men, and every man lived apart and independently. With what ſhew of reaſon then can one ſet about to derive duties from our obligation to ſociality, the greater part of which would have place, tho' there were no ſocial ſtate?

Sect. VIII.

And therefore in this ſtate all men had not a right over all, nor were men mere brutes.

Whence it is evident, how abſurdly *Hobbes* derives all right from compact, and therefore attributes to every man, in a ſtate of nature, a right to all, and over all; and thus preſcribes the law of nature from this ſtate (l. 1. § 73); nor do thoſe writers ſpeak leſs unreaſonably, who repreſent a ſtate of nature, as a ſtate in which men would differ very little from brutes, as being bound or cemented together by no ties, no obligations *.

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* Thus a natural ſtate is deſcribed by Cicero, pro Sext. Roſcio, cap. 42. So Horace, Serm. 1. v. 99.

Quum proceſſiſſent primis animalia terris
Mutum & turpe pecus: glandem atque cubilia propter
Unguibus & pugnis, dein fuſtibus, atque ita porro
Pugnabant armis, quæ poſt fabricaverat uſus.
Donec verba, quibus voces ſenſuſque notarent,
Nominaque invenere, dehinc abſiſtere bello,
Oppida cœperunt munire, & condere leges,
Ne quis fur eſſet, neu latro, neu quis adulter.

Many ſuch paſſages are to be found among the ancients, which are collected by Pufendorff of the law of nature, *&c.* 2. 2. 2. But all this is fiction, and highly improbable. For tho' we ſhould grant, that in a ſtate of nature men would be very brutal; and tho' we find that in former times, and even now, ſeveral nations are not very far removed from the brutes; (ſuch an account is given of the Hunni by Ammian. Marcell. 31. 2.) yet it does not follow from hence, that in a ſtate of nature, the law of nature cannot at all be known, nor does at all oblige.

In a ſtate of nature, all men have the right of making war.

Sect. IX.

Now, ſince where magiſtracy, and poſitive laws, and puniſhments, do not take place, as we have ſaid, they do not in a ſtate of nature (§ 6); there the oppreſſed can have no recourſe, have no defence but in themſelves; the conſequence is, that in a ſtate of nature every one has a perfect right to repel violence and injury by force, and to extort from others by violence whatever they owe him by perfect obligation; but not to extort from any one the offices of humanity and beneficence (l. 1. § 84.) unleſs he hath voluntarily bound himſelf by pact to do them (l. 1. § 386), or extreme neceſſity forces one to ſeize ſomething belonging to another, and to convert it to his own uſe (l. 1. § 170); eſpecially if the good offices be of ſuch a kind, that one might perform them without any detriment to himſelf, were he not quite devoid of all humanity. (l. 1. § 216).

* Wherefore, the violence with which David menaced Nabal upon his refuſing him certain offices of beneficence, would not have been excuſable, even in a ſtate of nature, 1. Sam. xxv. 21, 22. For Nabal was only obliged by the law of gratitude to ſupply David. But to ſuch offices none can be forced, unleſs the ingratitude be pregnant, and attended with injuſtice (l. 1. § 227). Extreme neceſſity would have excuſed force, but not ſuch revenge as David threatened, while Nabal had not yet reſiſted him, but had only denied his requeſt, which it is plain he had a right to do, eſpecially, as he was not yet convinced of the juſtice of the cauſe.

Sect. X.

Pacts are chiefly neceſſary in this ſtate.

But ſeeing, in a ſtate of nature, none can be compelled to the good offices of humanity and beneficence, and therefore he who would be ſure of them, muſt ſecure the performance of them to himſelf by pacts (§ 9), it follows, that all we have ſaid about pacts, and the duties of thoſe who make compacts or contracts, as likewiſe of the rights of commerce, hath place, or at leaſt may have place in a ſtate of nature; nay, that men ought, in this ſtate, frequently to ſtipulate to themſelves even the performance of what is due to them by perfect right, by interveening pacts; and therefore that there is no ſtronger tie to hold men together in this ſtate than the religious regard to pacts, which failing, or being contemned, all friendſhip and correſpondence muſt ceaſe.

Sect. XI.

Whether the miſery of this ſtate be ſo great as it is commonly repreſented.

Now, theſe things being premiſed, it is obvious, that tho' this ſtate be repreſented as moſt miſerable by Hobbes, and even by Pufendorff, yet many things which ſeem to them to be wanting in it, and of which they ſeem ſo much afraid, ought not to be attributed to this ſtate itſelf, ſo much as to the wickedneſs of mankind; and that ſome things for which they reproach this ſtate, as ſolitude, poverty, weakneſs, barbarity, and perpetual ſtrife, might be avoided in a ſtate of nature, as well as in a civil ſtate, if men would follow right reaſon *, and are equally unavoidable in a civil ſtate as in a natural one, if men will not act conformably to right reaſon, Titius obſ. ad Pufend. de offic. hom. & civ. 2. 1. 9.

* For ſolitude can only be conceived amongſt a few, and for a ſhort ſpace of time Indigence, hunger and cold could not oppreſs men more in a ſtate of nature, than they may do in a civil ſtate, ſince nothing hinders men to poſſeſs themſelves of neceſſaries, and carry on commerce in a ſtate of nature as well as in civil ſtates, that inequality of dignities which begot luxury, the mother of poverty, being unknown. Barbarity and ignorance are cured by the culture of reaſon. But why might not men have improved reaſon, as well in a ſtate of nature as in a civil ſtate? Nay, are not ſimplicity and candour often miſrepreſented as rudeneſs; and on the other hand, is not an affectation of elegancy too often ſet forth as politeneſs? Beſides, ſince even in civil ſtates the only remedy for the weakneſs of particulars, is by pacts and covenants, why may not the ſame be done in a ſtate of nature? In fine,

if ſtrife and war be reckoned amongſt the evils of a ſtate of nature, a civil ſtate will not be found to have much pre-eminence above it in this reſpect, ſince in conſequence of the latter, whereas in ancient times, particulars tried their ſtrength one with another to the hazard of a few, now whole nations wage war to the deſtruction of myriads. Let any one therefore pronounce a ſtate of nature worſe than a civil ſtate if he can, when it is evident that the latter is liable to all the ſame inconveniencies as the former; and that is not ſubject to ſome to which this is obnoxious.

Sect. XII.

Why men have preferred the civil ſtate.

Therefore it was not the extreme miſery of a ſtate of nature (§ 11), but partly the hopes of greater conveniencc and ſecurity, and partly the malice of men that made them form themſelves into ſocieties, as ſhall be ſhewn afterwards. But ſince there is no ſtronger tie or bond for holding men together than pacts and conventions, the conſequence is, that ſocieties were conſtituted by pacts and conventions; and becauſe a few more eaſily conſent in the ſame end than many, it is probable that men firſt formed more ſimple, and then more complex ſocieties *.

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* Sacred hiſtory ſufficiently confirms this. For firſt, we find Adam and Eve in the matrimonial ſtate, the moſt ſimple of all ſocieties, Gen. ii. 22, 23. Then children are born to them, and thus a new ſociety was produced, Gen. iv. 1, 2. ſomewhat more complex, between parents and children. None could then be born ſlaves, unleſs you ſay that our firſt parents reduced their children and grandchildren into ſlaves. Nay, ſince Noah was ſaved by the ark with his wife, his ſons and his ſons wives only, it is probable that pious men then had no ſlaves in their families, Gen. vi. 18. Tho', on the other hand, it is evident, from what is ſaid of the poſterity of Cain, Gen. vi. 4. that ſome men then oppreſſed others, and reduced them into ſervitude. Again, we have an inſtance of the moſt complex ſort of ſociety, Gen. iv. 17. So that it appears very certain, that the progreſs was gradually from more ſimple to more complex ſocieties, and from theſe to

the moſt compounded of all, which is commonly a civil ſtate or republic.

Sect. XIII.

What ſociety and a ſocial ſtate is.

Here we underſtand by *ſociety* the conſent of two or more perſons in the ſame end, and the ſame means requiſite to obtain that end; wherefore, while ſuch conſent laſts, there is ſociety. And ſo ſoon as they who had formerly conſented in the ſame end and means, begin to propoſe and purſue each his own end, that ſociety is broke and diſſolved, and each begins to have his own to himſelf*. Whence a *ſtate* in which men live in ſociety is called a *ſocial ſtate.*

* I would not be underſtood to mean, that the pact by which ſociety is formed becomes null by the diſſent of any one of the parties. This opinion I have already confuted (§ 382): But that ſuch a one can no longer be conſidered by the reſt as an aſſociate, who does not concur with them in the ſame end and means, and ſhews that diſpoſition by inconteſtible ſigns and evidences. For in that caſe, the others continue to have a right by the convention to force him to fulfil his pact, and all the terms and articles of his agreement; or if that can't be done, to repair their damage, and to make them ſatisfaction. But ſuch a perſon can no longer be ſaid to be an aſſociate, becauſe the definition of an aſſociate no longer agrees to him from the moment he perfidiouſly breaks the bond of union and ſociety.

Sect. XIV.

Societies in reſpect of their ends are of very different kinds.

But ſince every ſociety propoſes or tends to a certain end (§ 13), but the ends may be very different; hence it follows, that if the end be *juſt* and *lawful*, the ſociety formed for that end is likewiſe *juſt* and *lawful* (l. 1. § 398). Wherefore ſocieties of pyrates, robbers, and ſuch like ſocieties, are moſt baſe and flagitious. Societies muſt be judged of by their ends*; and hence means muſt be judged of by their ends, and the laws, rights and duties of perſons united in a ſociety, muſt be inferred from the end of that ſociety.

* This we have already ſeen with reſpect to the contract of *partnerſhip*, the end of which is common gain (l. 1. § 379). But matrimonial ſociety has another end; a ſociety of maſters and ſervants has another end; and in fine, that moſt complex of all ſocieties, which we call a republic, has yet another end. Therefore, as many different ends as there are, ſo many different kinds of ſociety there are, and ſo many ſocieties ſo many different ends muſt there be. Ariſtotle begins his political work with a remarkable obſervation to this purpoſe. "Becauſe we ſee all communion or ſociety is conſtituted for the ſake of ſome good (for all things are done with a view to ſomething that appears good to the agent) it is evident that all ſocieties have ſome good as their propoſed end." (Politic. 1. 1.)

Sect. XV.

Societies in reſpect of conſent are either voluntary or forced.

But ſince ſociety cannot be underſtood without conſent (§ 13), which is either voluntary or extorted by force, which we call *forced conſent*, and which may become valid by ratification (l. 1. § 345); hence it follows, that ſome ſocieties are *voluntary* and *cordial*, and others are *forced*; but that the latter ought not to be pronounced unjuſt, becauſe they had a vitious or faulty origine, if thoſe who were at firſt forced to enter into ſociety do afterwards expreſly or tacitly ratify their conſent (l. 1. § 381).

* Thus was matrimony ratified between the Romans and the Sabines; and between the Benjamites and the daughters of Shiloh, Judg. xxi. 21. tho' its origine in both caſes was unjuſt, being violent; becauſe the raviſhed afterwards confirmed the deed by their conſent, and adhered to their marriages, tho' they had been forced, Dion. Hal. antiq. Rom. l. 2. p. 110. In like manner, the ſociety between maſters and their ſlaves taken in war, is originally forced: And yet ſometimes, the mildneſs and humanity of maſters has engaged the ſlaves to ſerve with good will, and to ſay ſeriouſly, what in Plautus, Capt. 2. 2. v. 21, one ſays with great grief,

Quamquam non fuit multum moleſta ſervitus:
Nec mi ſecus erat, quam ſi eſſem familiaris filius.

See Exod. xxi. 5.

Sect. XVI.

They are formed either by expreſs, tacite, or preſumed conſent.

Beſides, conſent being either expreſs or tacite, which is inferred from ſome deed, of which kind is even patience (l. 1. § 391), it follows, that ſocieties may be formed either by *expreſs* or *tacite* conſent; and it is the ſame as if perſons had conſented, when they afterwards live with others in ſociety, and purſue the ſame end with them by the ſame means; nay, ſeeing ſometimes we judge one to have conſented from the very nature of the thing, (l. 1. § 391), it is plain that ſociety may ariſe from preſumed conſent *.

* Such is the conſent between parents and children. For ſo far are children from conſenting directly to that ſociety at the time they enter into it, that they are then abſolutely incapable of conſenting. And tho' coming afterwards to underſtand the nature of the thing, they might conſent if they would; yet ſo far are all of them then from teſtifying this conſent by words and deeds, that many more diſſent and rebel. But this ſociety is not therefore diſſolved, becauſe the education of children requires this ſociety, and it is preſumed that children cannot but conſent to live with their parents in ſuch ſociety, without which they can neither be conveniently preſerved nor educated.

Sect. XVII.

Some ſocieties are ſimple, and ſome are more compounded.

Sometimes it happens, that not only individuals, but alſo whole ſocieties intend the ſame end, and agree upon the ſame means for obtaining it. But ſuch conſent or agreement being ſociety (§ 13), the conſequence is, that not only individuals, but that whole ſocieties may coalite into ſociety; and therefore ſocieties are either *ſimple*, ſuch as are thoſe formed by individuals; or they are more complex, ſuch as thoſe entred into by ſimple ſocieties,

ties, which are then conſidered as aſſociates. In the ſame manner, it is evident that complex ſocieties may become larger and more compounded; ſo that ſome ſocieties may conſiſt not only of many thouſands, but of myriads *.

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* Experience confirms and illuſtrates all this. The moſt ſimple ſocieties are thoſe of perſons joined in marriage, of parents and children, maſters and ſervants. Of theſe ſocieties coalited among themſelves, is formed a larger ſociety, which we call a family. Of many families are formed hamlets, villages, towns. Of many villages, *&c.* are formed whole ſtates or republics; of many republics are formed ſyſtems of republics, ſuch as were the Greek republics. See Cicero's offices, 1. 17. that is, if leſſer and more ſimple ſocieties are not ſufficient to obtain a certain end, it is neceſſary to form greater and more complex ſocieties by the conſociation of many little ones. Hence Juſtin, hiſt. 1. 1. obſerves, that in the beginning kingdoms were confined within the narrow bounds of a particular counties. And this is plain from the examples of the Canaanites, the Phœnicians, the Greeks, the Gauls, the Germans, the Britons, whoſe provinces were originally ſplit into ſeveral different ſtates, kingdoms, or governments, Gen. xiv. 1. Joſ. xii. 7. Judg. i. 7. Strabo, Geograph. 16. p. 519. and other writers. But by degrees, ſeveral ſtates being oppreſſed by violence, coaleſced with others into a larger ſtate; and many ſtates being in danger from their neighbours, formed a ſtill larger ſyſtem or confederacy of republics. Thus the Amphyctionian confederacy ſhook the power of the Medes; and the Greeks, tho' otherwiſe very inconſiderable, became ſtrong merely by their union and conſociation. See Jo. Henr. Boecler. de concilio Amphictyonum.

Sect. XVIII.

Some are equal, and ſome are unequal.

In fine, thoſe who conſent in the ſame end and means, are either equal or not equal. The former, as equals, by common conſent conſult about, and find out the means neceſſary to a common end, and thus *equal* ſociety is formed. In the latter, the buſineſs of finding out the end and means is intruſted or committed to one or more, and then ſociety is *unequal*, and this ſociety is likewiſe called *Rectoreal.* Now, it is plain, from the nature of the thing, and from human temper and diſpoſition, that the larger a ſociety is, the leſs practicable is it, that ſo great a multitude of aſſociates ſhould find out neceſſary or proper means by common conſent and ſuffrage; and therefore the larger the ſociety is, the more neceſſary it becomes that it be rectoreal and unequal *.

* Hence experience teaches us, that the more extenſive empires are, the leſs liberty they have; and empire daily extending itſelf and enlarging its dominions, neceſſity often obliges men, otherwiſe great lovers of liberty, to bear ſubjection with patience. For in a large but free and equal ſociety, becauſe the greater number will overpower the better part, bad councils muſt often take place and be purſued; and liberty degenerating into licentiouſneſs, muſt create diſorders, and rend the ſtate into factions. In which caſes, there is often no other remedy but ſubjection to one head, as it happened in the Roman republic, when Auguſtus uſurped the ſovereign power, according to the opinion of the moſt prudent among them. (Tacitus. annal. 1. 9.)

Sect. XIX.

Every ſociety is one moral perſon.

But of whatever kind ſociety be, it is plain, from the deſcription of it, that it is deſigned in order to obtain an end by certain means (§ 13). But ſince to conſent in this manner is to will the ſame thing, the conſequence is, that the underſtanding and will of every ſociety are to be conſidered as one will and one underſtanding (l. 1. § 32), and therefore every ſociety conſtitutes one perſon, which, in contradiſtinction to a phyſical perſon, is called *a moral one* *.

* Cicero de off. 1. 17. obſerves, " that by every kind of union and friendſhip, many perſons become one, and that becauſe all think and will the ſame thing." Add. Catilin. 4. 7. So Apuleius de habit. doctrin. Platon, l. 2. p. 25.

p. 25. " A ſtate, ſays he, is a conjunction of many perſons, in which ſome govern, and others are governed, formed by concord for mutual aſſiſtance; and who being ruled by the ſame good laws, and having thus the ſame manners, conſtitute one body, every member of which hath the ſame will." We may learn the nature of a moral perſon from Seneca likewiſe, Ep. 102. as alſo from l. 30. D. de uſurp. & uſucap.

Sect. XX.

Therefore the laws and duties of ſocieties, and of individuals are the ſame.

Now, if every ſociety be, as it were, one perſon (§ 19), it muſt, by conſequence, be ſubject to the ſame laws as individuals or phyſical perſons *; and therefore all the duties which the law of nature preſcribes to particular perſons, ought likewiſe to be religiouſly obſerved by all ſocieties greater or leſſer. In like manner, the ſame rights which belong to particular perſons, belong alſo to ſocieties, and aſſociated perſons have the ſame common things and rights; yea, all the affections or properties of bodies and perſons may juſtly be attributed to ſocieties; and thus they, by very elegant metaphors, are ſaid *to flouriſh*, or *to be ſick*; nay, *to die and periſh*. See Koehler. ſpec. jur. gent. 1. § 20. & ſeq.

* And hence appears the truth of what was ſaid above (l. 1. § 21.), that the law of nations is nothing elſe but the law of nature applied to a ſocial ſtate, and the affairs of ſocieties and whole political bodies. Wherefore, it is juſtly called by Koechler, ibidem, " Jus naturale ſocietatum, the natural law of ſocieties." And hence likewiſe it is evident how ſadly they reaſon, who, as it were, abſolve empires and ſtates from the obligation of natural law, and pronounce all things lawful to emperors which are for their private intereſt, or that of their empires. It was therefore a moſt accurſed ſaying of Cæſar (in Cicero de off. 3. 21.)

Si violandum eſt jus, regnandi gratia
Violandum eſt, aliis rebus pietatem colas.

Hertius has ſaid a great deal to excellent purpoſe on this execrable doctrine, Polit. pæd. § 13. p. 22. & ſeq.

Sect. XXI.

The obligations of aſſociates or members with regard to ſociety, and of ſociety with reſpect to them.

From the ſame principle we may juſtly conclude, that every aſſociate, or member of a ſociety, is obliged to adjuſt his actions to the common end of that ſociety; and therefore that he injures his fellow-aſſociates, who ſeeks his own advantage at their detriment, or who does any thing contrary to the end of the ſociety of which he is a member, or hurts any one of its members. For which reaſon, no injuſtice is done to him, if he be forced, by what is called *puniſhment*, to repair the injuries he has done, and to behave better with regard to his ſociety for the future, (l. 1. § 211). And it is no leſs evident, that an aſſociate cannot be blamed if he ſeparates ſuch a bad aſſociate from himſelf, or if he leave a ſociety in which no regard is paid to its common end, nor to the means requiſite to that end.

Sect. XXII.

The obligations of one ſociety with reſpect to the others.

Hence likewiſe it is perſpicuous, that ſociety ought *to hurt no perſon*, but *to render to every perſon his own*; but is not obliged to prefer the intereſt of any private perſon, or of any other ſociety to its own. For ſince every ſociety conſtitutes a moral perſon, (§ 19), and hath the ſame rights with phyſical perſons (§ 20), and no perſon is obliged to love another more than himſelf (l. 1. § 94), or to perform to another the offices of humanity, which would be hurtful to himſelf, or to his friends, to whom he is under ſpecial obligations (l. 1. § 218); hence it follows, that no ſociety is bound to render ſuch offices to another ſociety, or to prefer the intereſt of another ſociety to its own *.

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* Therefore the conſociates in a mercantile ſociety are not inhuman when they refuſe a ſhare in their monopoly to a private perſon, or another ſociety. For that would be a detriment to themſelves. Nor will any one ſay the Cimbri, Teutones and Helvetians, who ſeeking a new

habitation to themſelves, deſired, as by their right, that the Romans would turn out in their favour, and leave them certain tracts of land they poſſeſſed. For that the Romans could not grant to them without manifeſt detriment to their republic. For as Florus ſays, ("Quas enim terras daret populus, agrariis legibus intra ſe dimicaturus?" 3. 3.) And Cæſar gave a very juſt anſwer to the Tencteri and Uſipetii, who demanded much the ſame thing, "That there were no vacant lands in Gaul which could be given, eſpecially to ſuch a multitude, without doing injuſtice." (de bello Gallico, 4. 8.)

Sect. XXIII.

With reſpect to larger ſocieties.

In like manner it is demonſtrable, that in more compounded ſocieties, the intereſt of the leſſer is not repugnant to that of the larger, but ought to ſubmit to it; becauſe, in this caſe, the leſſer ſocieties are conſidered as individuals (§ 17); but individuals ought to conſent to the ſame end and means, (§ 13), and not to prefer their private intereſt to the common end of the ſociety (§ 21); and therefore leſſer ſocieties, which have coalited into a larger, or more compounded ſociety, can do nothing which is manifeſtly contrary to the intereſt of that larger ſociety, without injuſtice *.

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* Thus, for example, it would be no ſmall advantage to a family to be exempt from certain impoſts and taxes; but becauſe ſuch an exemption would be detrimental to the republic; none will ſay its governors act unjuſtly, when they refuſe it to a family that aſks it. On the contrary, magiſtrates and princes would be juſtly blamed, if they ſhould thus cut the nerves of a republic, in order to promote the private intereſt of certain families; and therefore, when Nero thought of taking off all the taxes, and making a glorious preſent to the people of a total immunity from them, the ſenate interpoſed, pronouncing it a diſſolution of the empire to diminiſh the revenues by which it was to be ſupported, Tacit. Annal. 14. 50.

Sect. XXIV.

General axioms concerning the duties of aſſociates.

To conclude; ſince the duties of the members of ſocieties muſt be inferred from the end of the ſociety (§ 14), it is plain that this is, as it were, the ſum and ſubſtance of all the laws of ſocieties; "That all the members of a ſociety are bound to do every thing, without which, the end propoſed by that ſociety cannot be obtained; and therefore the happineſs of ſociety is juſtly ſaid to be the ſupreme law of all its members."

REMARKS on this Chapter.

I cannot ſee how the phyſical ſtate of man, as it is defined by our Author, can be ſaid not to belong directly to the moral ſcience. For whence can a man's duties or obligations, which conſtitute his moral ſtate, be inferred but from his phyſical ſtate, from his frame, condition, rank and circumſtances; from his make, and the relations he ſtands in, in conſequence of his make and ſituation? Properly ſpeaking, man's phyſical ſtate lays him under moral obligations; or binds and obliges him to a certain behaviour; binds and obliges him to chooſe to act, in a certain manner, or according to certain rules: or, in other words, man's phyſical ſtate conſtitutes the law of his nature, by which he is bound, whether he conſents or not, being bound to conſent and chooſe to act agreeably to that law. Man cannot be ſaid to be under the law of nature, or ſubject to it by his conſent in any other ſenſe, but this, that were he not capable of diſcerning the law of his nature, of perceiving its reaſonableneſs, its excellence, and of conſenting to it, he would not be a moral creature; but being ſuch by his make, he is by his nature under natural and immutable obligations to know the law of his nature, and to regulate his conduct in all inſtances by it. And all men are equally under or ſubject to the law of nature: no man is leſs or more ſubject to it: but all *men* as *men*, are equally, univerſally obliged to obſerve it as the law of their nature, the law of reaſon, the law of God their Creator. And in this ſenſe all men are equal, or there is an equality of obligation, and of right belonging to all men. Whence it follows, that all men are by nature equally *ſubject* and equally *free*; equally ſubject to the ſame univerſal law, and equally free or exempt from all obligations but thoſe which ariſe from the law of nature. All are equally bound by the law of nature; and for that reaſon, all are equally free from all obligations but thoſe which the law of nature lays equally upon all. All are equally obliged to direct their conduct according to the law of nature; and therefore every one hath a right, an unalienable right, to make the law of nature his rule of conduct; and none hath a right ſo much as to adviſe, far leſs to force or compel any one to act contrary to the law of nature, or to hinder any one from making the law of nature his rule, and exercing his right to judge of it, and to act according to it: nay, none hath a right to diſpoſe of, quit or reſign this natural right and obligation. For that would be a right to throw off his natural obligations, and to chooſe or take another rule to himſelf. Man is free, or maſter of his actions free and maſter of his conſent; but how far? within the bounds that the law of nature or of reaſon ſets to him. That is, he is free to conſent and to diſpoſe of himſelf and his actions, in any way not contrary to the law of nature; but not in any way that is repugnant to it, or which the law of nature forbids. Now, if this be carefully attended to, it will not be difficult to determine any of the queſtions that are commonly put by moraliſts about what are called by our Author adventitious obligations, or obligations impoſed upon man by himſelf, or ſome deed of his own. For, from what hath been ſaid, it is evident that man can bring himſelf under no obligation contrary to the law of his nature. Such adventitious impoſitions upon himſelf are *ipſo jure* null, being morally not in his power, as being contrary to the law of nature, which he cannot abrogate, reſcind or diſpenſe with. This general principle ſhall afterwards be applied to civil ſociety, and the impoſitions or obligations men lay themſelves under by a civil contract. Here, we ſhall only obſerve, that the natural inequalities which take place amongſt mankind, are not inconſiſtent with the moral equality and freedom of mankind that hath been defined. The firſt diſtinction which ſubjects ſome perſons to others, is that which is made by birth between parents and children, which diſtinction makes a firſt kind of government in families, where the children owe obedience to their parents, who are the heads of families. But of this we ſhall ſay nothing here, becauſe our Author treats expreſly of it at great length in a ſucceeding chapter. It will be better for us to ſupply here a few things not touched upon by our Author, which however it is of importance to clear up. 1. Then, there is an evident inequality amongſt mankind, intended by nature in reſpect of the goods of the mind. And it might eaſily be ſhewn, were this the proper place for it, that, as our excellent poet moſt beautifully expreſſes it,

Order is heav'n's firſt law; and this confeſt,
Some are, and muſt be greater than the reſt,
More rich, more wiſe; but who infers from hence
That ſuch are happier ſhocks all common ſenſe.
Heav'n to mankind impartial we confeſs,
If all are equal in their happineſs:
But mutual wants our happineſs increaſe;
All nature's difference keeps all nature's peace.

Eſſay on Man, Ep. 4.

But what we would obſerve, is in the firſt place the fact. "God, who does nothing in vain, (ſays an excellent author often quoted in our remarks) hath ſo differenced or divided men, that twenty men (if they be not all idiots, perhaps if they be) can never come together, but there will be ſuch a difference in them, that about a third will be wiſer, or at leaſt leſs fooliſh than the reſt, theſe, upon acquaintance, tho' it be but ſmall, will be diſcovered, and (as ſtags that have the largeſt heads) will lead the herd: For while the ſix diſcourſing and arguing one with another, ſhew the eminence of their parts, the fourteen diſcover things that they never thought of, or are cleared in divers truths which had formerly perplexed them. Wherefore, in matter of common concernment, difficulty or danger, they hang upon their lips as children upon their fathers: And the influence thus acquired by the ſix, the eminence of whoſe parts are found to be a ſtay and comfort to the fourteen, is the *authority of the fathers.* Wherefore, this can be no other than a natural ariſtocracy diffus'd by God throughout the whole body of mankind, to this end and purpoſe. And therefore, ſuch as the people have not only a natural but a poſitive obligation to make uſe of as their guide; as where *the people of Iſrael are commanded to take wiſe men and underſtanding, and known among their tribes, to make them rulers over them.* The ſix will acquire an authority with, and imprint a reverence upon the fourteen; which *action* and *paſſion* in the *Roman Commonwealth* were called *authoritas patrum,* and *verecundia plebis.* Nevertheleſs, if the few endeavour to extend the authority which they find thus acquired, to power, that is, to bring the fourteen to terms or conditions of ſubjection, or ſuch as would be advantageous to the few, but prejudicial to the many; the fourteen will ſoon find, that conſenting, they hurt not only themſelves, by endamaging their own intereſts, but hurt the ſix alſo, who by this means come to loſe their virtue, and ſo ſpoil their debate, which, while ſuch advantages are procurable to themſelves, will go no farther upon the common good, but their private benefit. Wherefore, in this caſe they will not conſent, and not conſenting, they preſerve not only their own liberty, but the integrity of the ſix alſo, who perceiving that they cannot impair the common intereſt, have no other intereſt left but to improve it. And neither any converſation, nor any people, how dull ſoever, and ſubject by fits to be deluded, but will ſoon ſee thus much, which is enough, becauſe what is thus propoſed by the fourteen, or by the people, is enacted by the whole, and becomes that law, than which, tho' mankind be not infallible, there can be nothing leſs fallible in mankind." Art, ſays our Author, "is the imitation of nature; and by the obſervation of ſuch lines as theſe in the face of nature, a politician limns his commonwealth." This is the fact, God having divided mankind into the natural ariſtocracy and the natural democracy, hath laid in nature the foundation of ſocial union and civil government, and thereby delineated the whole myſtery of a commonwealth, which lies only in *dividing* and *chooſing*. " Nor has God (if his works in nature be underſtood) as the ſame Author ſpeaks, left ſo much to mankind to diſpute upon, as who ſhall divide, and who chooſe, but diſtributed them for ever into two orders, whereof the one hath the natural right of dividing, and the other of chooſing." 2. But this natural diviſion of mankind gives no more than authority to the ariſtocracy, or the right of counſelling, and not the power of commanding; it gives them ability and right to adviſe or counſel right, and lays an obligation upon the many to ſeek and follow advice and counſel: But, as it cannot give a right to the few ſo much as to counſel, far leſs to command what is contrary to reaſon and the law of nature; ſo it can lay no obligation upon the many to be led by the few to what is wrong or contrary to the law of nature. The few are under obligation to conform to the law of nature in their advices or counſels; and the many are under obligation not to be influenced by the few to act contrary to the law of nature, tho' by the nature of the thing, and by the law of nature, they be under obligation to ask and take counſel from the few. Put therefore the caſe, that a few being diſcovered to be capable of leading or counſelling in matters of common concernment, the many, by voluntary conſent and agreement, ſhould put themſelves under the guidance, under the command, if you will, of the few; then, it is true, they would be under an obligation by conſent to obey; and the natural authority of the few, would be then changed into a right to lead or command the many; but not to lead or command contrary to the law of nature, becauſe neither have the many power to contract with the few for ſuch ſubmiſſion and obedience, nor have the few power (I mean moral power or right) to ſtipulate to themſelves ſuch ſubmiſſion and obedience. 3. There is an inequality amongſt mankind intended by nature, or at leaſt not contrary to nature, in reſpect of external goods or the goods of fortune, all which may be comprehended in one word *wealth*. But as ſuperiority in reſpect of the goods of the mind begets authority; ſo ſuperiority in reſpect of external goods, begets power or dominion, " in regard that men (as the ſame Author expreſſes it) are hung upon theſe not of choice, as upon the other, but of neceſſity, and by the teeth, for as much as he who wants bread is his ſervant that will feed him; and if a man thus feeds a whole people, they are under his empire. There is a real diſtinction between authority and power. Wherefore, the *leviathan*, tho' he be right, where he ſays *riches are power*, is miſtaken where he ſays, that *prudence*, or the *reputation of prudence*, is power. For the learning or prudence of a man is no more power, than the learning or prudence of a book or Author, which is properly authority. A learned writer may have authority, tho' he has no power; and a fooliſh magiſtrate may have power, tho' he has otherwiſe no eſteem or authority. The difference of theſe two is obſerved by Livy in Evander, of whom he ſays that he governed rather by the authority of others than by his own power. It is property that in proportion to it begets or gives power, or makes neceſſary dependence." But now what we ſaid juſt now of authority, will likewiſe hold here. Whatever ſuperiority one may have over others in dominion or empire, by the neceſſary dependence on him his ſuperior property creates, yet he can never have a right to exerciſe that dominion, empire, or power, contrary to the law of nature: nor can his dependents come under any obligation, even by conſent added to neceſſary dependence, to be governed by his will, contrary to the law of nature, and the eſſential and immutable obligations they are under to obey it. And therefore dominion exerced contrary to the law of nature, is exerced without right, nay, contrary to right and obligation: For which reaſon, every dependent on any ſuperior in power, has a right to refuſe ſubmiſſion to, and to ſhake off dominion exerced over him contrary to the law of nature. That muſt be true; or of neceſſity it muſt be ſaid, that ſuperiority in dominion releaſes from the obligations of the law of nature; and that inferiority or dependence knows no other law but the arbitrary lawleſs will of a ſuperior in property, and by conſequence in power: which is to ſay, that there is no law of nature but the law of ſtrength or force. It is indeed abſurd to ſay, that it is contrary to the law of nature to ſeek, or to have ſuperiority in property, *i. e.* to have dominion and dependents. Whatever property is purchaſed by honeſt induſtry, it, with all the ſuperiority it gives, is a lawful purchaſe. But it is no leſs abſurd to ſay, that the law of nature does not extend to thoſe who have power, or does not limit its exerciſes, and lay it under certain obligations. And yet unleſs there be no obligations with regard to the exerciſe of dominion or power by the law of nature, there muſt be an exerciſe of power that is unlawful, and to which conſequently, it is unlawful to ſubmit or obey. Now, if it is asked, what is this law of nature with regard to ſuperiors and inferiors, we anſwer, with our Author, it is the law of love or benevolence. And he goes on in the ſucceeding chapters to ſhew, what that law of love and benevolence requires in all different coalitions or ſocieties of mankind, whether natural, as that between parents and their children, or adventitious, as that between maſters and ſervants, and ſubjects and magiſtrates, *&c.* Nor, as he obſerves, can we ever be difficulted in any caſe, to find out the duties of the members of any ſociety towards its head and towards one another, or of any one ſociety towards any other diſtinct independent ſociety, if we remember that ſocieties are moral perſons, inveſted with the ſame rights, and lying under the ſame moral obligations as phyſical perſons. For that being remembered, it muſt, for inſtance, be true, that ſocieties are bound to juſtice and charity, as well as individuals; and that ſocieties have the rights of ſelf-defence and preſervation, as well as individuals. If which two principles be granted, it will be an eaſy matter to reſolve any queſtion about the rights and duties of ſuperiors and inferiors in any ſociety; or about the rights and duties of any diſtinct independent ſocieties. Mean time it is evident, that the natural inequalities amongſt mankind, or the inequalities made neceſſary by the ſtate and circumſtances of mankind, and which muſt for that reaſon be ſaid to have been intended by the Author of nature, do not deſtroy the moral equality and freedom of all mankind, eſſential to man as ſuch, *i. e.* the equal ſubjection of all mankind to the law of nature, and their equal liberty and right to act agreeably to it, and to demand from one another behaviour conformable to it. In this reſpect, all men are equally bound and equally free; or all men have the ſame common rights and duties.

CHAP. II.

Of the duties belonging to the matrimonial ſtate, or ſociety.

Sect. XXV.

Matrimony is a lawful, and the moſt ſimple ſociety.

THat God wills mankind ſhould be propagated, and that the number of thoſe who daily pay their debt to nature ſhould be ſupplied by a new race, is plain from hence, that otherwiſe his end in creating mankind could not be obtained (l. 1. § 77.) they therefore who have this end in view, propoſe a good end to themſelves, and are obliged to have recourſe to the means for compaſſing that end. Since then this end cannot be accompliſhed, unleſs a man and a woman conſent to copulation, the conſequence is, that matrimony is a ſociety *(§ 13)*, and that it is honeſt and lawful, being proper to a good end, which is very agreeable to God; and becauſe it conſiſts of the feweſt perſons of different ſexes that may be, it is the ſimpleſt of all ſocieties (§ 17*)*.

Hence the Greeks juſtly called the conjugal ſtate, *the root of all other ſocieties*, and, as it were, *the ſeminary of mankind*, becauſe without it man would be but of a ſingle age, as Florus ſays of the Romans while they had not wives, Hiſt. 1. 1. The matter is reaſoned moſt philoſophically by Seneca the tragedian in Hippolyt. v. 466.

Providit ille maximus mundi parens,
Quum tam rapaces cerneret fati manus,
Ut damna ſemper ſobole repararet nova.
Excedat, agedum, rebus humanis Venus,
Quæ ſupplet ac reſtituit exhauſtum genus:
Orbis jacebit ſqualido turpis ſitu.

And a little after he adds,

Cælibem vitam probet
Sterilis juventus: hoc erit, quidquid vides,
Unius ævi turba, & in ſemet ruet.

Sect. XXVI.

Its end is not only procreation, but education.

But the end of God, as the author of mankind, being not merely that men ſhould exiſt, but that they ſhould be truly happy (l. 1. § 77), it follows, that mankind ought not only to be propagated, but that the offspring ſhould be carefully educated, that they may not be uſeleſs burdens on earth, but may grow up into uſeful members of the human ſtate. Now, ſince this duty of educating offspring can be incumbent upon none but parents, in whoſe minds God hath, for that effect, implanted a moſt tender regard to their offspring *; hence we juſtly infer, that parents ought not only to have in their view, as the end of matrimony, the preſervation of children, but likewiſe their education; and therefore preſervation and convenient education are the genuine end of marriage.

Men, as Juſtinian obſerves, l. un. § 5. C. de rei uxor act. are ſtrongly ſtimulated by a natural impulſe to the care and education of their children. Nay not only are men thus impelled by nature, but the brutes likewiſe, who do not abandon their offspring till they are capable of providing for themſelves. But ſeeing God does nothing in vain, it is evident that God requires of man, that love and care of his offspring, which is the only end for which this inſtinct could have been implanted in us by him. Hence Euripides juſtly obſerves, in a paſſage already quoted in Medea, v. 1098.

Sed quibus in ædibus eſt liberorum
Dulce germen, eos, video curis

Confici

Conſici omni tempore :
Primum quidem, quo pacto illos bene educent,
Et unde victum relinquant liberis.

Sect. XXVII.

Matrimony defined, and ſome axioms relating to it.

Matrimony therefore is a ſimple ſociety between perſons of different ſexes formed for procreation and education. And, from this definition, it is plain, that marriage cannot be contracted without the conſent of the perſons of both ſexes (§ 13); and that the united parties are bound to all, without which, procreation and convenient education cannot be obtained *, and that every thing ought to be omitted which is repugnant to this end, (§ 24).

* For certainly, it would be better not to procreate, than to give a bad education to children. It would be but a ſmall loſs to mankind if every one was not equally prolific. But mankind receive great hurt from any one who is a diſgrace to the kind on account of his bad education. How unhappy was it for mankind that there was a Nero? And therefore Juvenal ſays with great gravity and judgment, Sat. 14. v. 70.

Gratum eſt, quod patriæ civem populoque dediſti,
Si facis, ut patriæ ſit idoneus, utilis agris,
Utilis & bellorum & pacis rebus agendis.
Plurimum enim intererit, quibus artibus, & quibus hunc tu
Moribus inſtituas.

See likewiſe Seneca of benefits, 3. 30.

Sect. XXVIII.

Marriage is made by conſent.

Since marriage cannot be formed without conſent (§ 27), it is obvious, that marriage between a raviſher and a raviſhed perſon is not valid, (l. 1. § 109), unleſs the latter ſhall afterwards ratify it by conſent * (§ 15); nor is marriage more valid, if any violence was done to either party (ibid.) or if either of the parties was ſeduced by any knaviſh art into a marriage, to which, had the party not been deceived, conſent would not have been given (l. 1. § 57). But tho' this nuptial conſent of the parties be abſolutely neceſſary, yet becauſe there can be no ſociety without conſent to the means as well as to the end, we think mere conſent to the end does not, by the law of nature, conſtitute marriage, but that immediate conſent to conjunction of bodies is requiſite.

* That is, if real force was uſed. For often in ancient times maids ſuffered an agreeable violence, not that they were averſe to the marriage, but that they might not ſeem to ruſh into an embrace. This was an ancient cuſtom, as is plain from Dion. Halicarn. antiq. Rom. 2. p. 100. where, to excuſe the rape of the Sabines by the Romans, he ſays, "That this kind of rape was not an injury, but done with a view to marriage, according to a very old cuſtom among the Greeks, which did honour to the women deſired in marriage." This was practiſed in other nations, it being judged more decent, that a virgin ſhould be taken with an appearance of violence, than that ſhe ſhould give herſelf up to a man of her own accord. And that ſuch force is not repugnant to conſent is very manifeſt.

Sect. XXIX.

The difference between betrothing and marriage.

Hence it is evident, at the ſame time, that conſent to marriage is more properly called, *contract to marriage*, or *betrothing*, than *marriage*; ſo that the diſtinction of the canoniſts between *ſponſalia de præſenti & de futuro*, is too ſubtle for the law of nature; yet, becauſe betrothing is a pact, and all pacts, by the law of nature, are perfectly obligatory (l. 1. § 387), none can queſtion but a contract of marriage ought to be fulfilled *, unleſs any of theſe circumſtances take place, by which, we have already obſerved, that all other pacts are rendered null (l. 1. § 382); or unleſs difference of tempers, or ſome other juſt reaſon, render it more adviſeable that it ſhould be departed from, than that it ſhould be compleated to the great misfortune of the parties.

* It may ſeem odd, that whereas the other Latin nations allowed an action upon betrothment, *ad id quod intereſt*, if the pact was not fulfilled, (Gell. noct. Attic. 4. 4.) the Romans left the betrothed perſons at perfect liberty to renounce, l. 1. c. de ſponſal. l. 2. c. de repud. But there being amongſt the Romans ſo much liberty with reſpect to divorce, it is impoſſible that this pact could be firmer than marriage itſelf was among them, or that there could be leſs latitude with regard to it than there was with reſpect to divorce after marriage.

Sect. XXX.

The hability of perſons in reſpect to age.

Since the end of matrimony is procreation and convenient education (§ 26), and nothing ought to be done that is repugnant to this end (§ 27); it follows, that thoſe who think of matrimony, ought to be of an age in which it may be expected they can be fit for both theſe ends; and therefore matrimony is not allowed, by the law of nature, to infants, or ſuch young perſons, as either have not vigour enough for raiſing up a new vigorous ſeed, or not the virtue and prudence requiſite to provide for a wife and children, and to take care of their children's education and conduct *.

* In this reſpect Lycurgus excelled all other legiſlators. For he, as Xenophon informs us, de rep. Laced. cap. 1. § 6. did not allow every one to marry when he pleaſed, but provided that matrimony ſhould be contracted when perſons were in the beſt condition for propagation. This he thought neceſſary in order to the propagation of a wholeſome vigorous race. And whereas he obſerved that many parents were fitter to propagate than to educate, he gave the care of education to the public; he made it a matter of public concernment; and an inſpector of the youth was appointed from amongſt thoſe who had been employed in the ſupreme magiſtracy, who was called *Pædonomos*." See Xenoph. ibid. cap. 2. § 2. And this is a piece of civil prudence which ought not to be neglected in other ſtates.

Sect. XXXI.

Whether aged perſons may marry?

Hence likewiſe it is evident what ought to be ſaid of the matrimony between aged perſons. For tho', on account of the indiſſolubility of this ſociety (of which afterwards) married perſons, who have become old in the conjugal ſtate, ought not to be ſeparated; and tho' marriage between a man in the decline of life, who is yet vigorous, and a young woman, is tolerable, becauſe the end of marriage may yet be accompliſhed by ſuch matrimony; yet no perſon of ſound judgment can approve of marriage between two aged perſons, or between a young man and a decrepit old woman, by which there can neither be conſent to the end nor to the means of matrimony, without the moſt ſhameleſs immodeſty *.

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* For what is more impudent and ſhameleſs, than for an old woman, who as Martial ſays, Epig. 3. 64.

Cum tibi trecenti conſules vetuſtilla
Et tres capilli, quatuorque ſint dentes,
- - - - - - -
Verumque demens cineribus tuis quæris.

Theſe ſort of matches are tolerated in commonwealths, tho' they do not deſerve the name of marriage (ſince, as Quintilian expreſſes it, Declam. 306. quædam & nubendi impudicitia eſt); but of them Puſendorff of the law of nature and nations ſays very juſtly, 6. 1. 25. "Perhaps we ſhall not ſpeak improperly if we call theſe *honorary marriages*, as we term thoſe offices *honorary*, in which a title only is conferred, without action or buſineſs. Nero (Sueton. cap. 35.) when he deſerted his wife Octavia's bed, excuſed himſelf with ſaying, "Sufficere ſibi uxoria ornamenta;" he was contented with the bare ornaments and badges of marriage; in alluſion to the triumphalia ornamenta, ſometimes beſtowed on perſons without the real ſolemnity of a triumph."

Sect. XXXII.

Of eunuchs, &c.

Much leſs is marriage to be permitted to thoſe who have been deprived of their virility, either by accident or maliciouſly, or who are naturally incapable of procreation; and therefore, tho' examples of ſuch marriages be not wanting, they are contrary to the law of nature, unleſs the impotence of the man, or the ſterility of the woman, be unknown and uncertain, or be not beyond all hopes of cure, and the parties be ſatisfied to wait in hopes of a change to the better.

Such marriages therefore among the Egyptians were abſurd, of which ſee Grotius, ad Deut. xxiii. 2. as are thoſe likewiſe among the Turks, of which Ricaut, in his ſtate of the Ottoman empire, 2. 21. And yet, even among Chriſtians, it hath been made a queſtion whether ſuch marriages are not lawful. There is a little treatiſe on this queſtion, entitled, de Eunuchi conjugio, reprinted Jenæ, 1737. But ſuch things may well be reckoned amongſt thoſe prodigies of which Juvenal ſpeaks in his time, Sat. 1. v. 22.

Quum tener uxorem ducat ſpado, Mævia Tuſcum
Figat aprum, & nuda teneat venabula mamma:
Difficile eſt, ſatyram non ſcribere.

Sect. XXXIII.

Whether all habile perſons be obliged, by the law of nature, to marry?

Tho' we may rightly conclude, from the ſame principle, that thoſe contract marriage allowably, who find themſelves in proper circumſtances for anſwering its ends and uſes; yet the obligation to marriage is not of ſuch a nature, as that he can be judged to have acted contrary to the law of nature, who prefers chaſt celibacy to inauſpicious marriage *. For ſince omiſſion of an action cannot be imputed to one who had no opportunity of doing it, (l. 1. § 114); and it often happens, that many accidents diſappoint one's deſign of marrying, and ſo deprive him of an occaſion; ſurely, in ſuch caſes, celibacy cannot be blamable, ſince providence hath not offered an allowable opportunity of engaging in marriage.

* This was the opinion of the Jews, as Selden has ſhewn, jure nat. & gent. ſecundum diſcip. Hebræorum, 5. 3. But it cannot be inferred from Gen. i. 38. for that is not a command but a bleſſing: And it is abſurd to accuſe thoſe, who prefer celibacy for juſt reaſons to marriage, of not conſulting the intereſts of mankind, as if mankind could ſuffer great loſs by the not marrying of one or a few, who are hindered from it by allowable reaſons. They ſeem to have forgot St. Paul's precept, 1 Cor. vii. who, leaving the paths of Chriſtians, go into this Jewiſh opinion.

Sect. XXXIV.

All copulation out of a married ſtate is unlawful.

But becauſe procreation and convenient education are the ends and uſes of copulation, and every thing ought to be omitted which is repugnant to theſe ends, nothing can be more certain, than that they are exceedingly guilty who abuſe that mean which is deſtined by divine appointment to theſe ends for the gratification of their luſt; and therefore all theſe wicked kinds of venery, which it is better to have no idea of than to know, all adultery, all whoredom, all ſtolen love, (which is, over and above its being contrary to the end of copulation, likewiſe attended with injurioufneſs to others); all uncleanneſs and unchaſtity, and all the infamous trade of bawding and pimping are diametrically repugnant to right reaſon, and the law of nature; and, in fine, that there is no other lawful way of propagating and ſupplying human race, but by the conjugal ſociety we have deſcribed.

* Theſe impure conjunctions are not deſigned in order to propagate, but to ſatiate luſt: And the ordinary effect of them is, that the perſons who thus copulate are induſtrious to prevent progeny by ſuch conjunctions. And if nature diſappoints this their wicked intention, ſo that children are procreated and brought into the world contrary to their deſire and intention, the parties are ſo far from having had any view to education, the other end, that they,

they (the father chiefly) utterly neglect the offspring, leaving them to the public, as an uncertain birth; whence it happens, for the moſt part, that ſuch misfortunate children become rather a diſgrace and a peſt to mankind, than an ornament. Now, ſince all theſe miſerable conſequences ought to be prevented, it is plain that magiſtrates do not act unjuſtly, when they oblige lewd perſons to provide for their baſtards, and force men to marry the women they had debauched under promiſe of marriage.

Sect. XXXV.

Whether plurality of huſbands be lawful?

For the ſame reaſon, πολυανδρία, that is, plurality of huſbands is contrary to right reaſon; as likewiſe, that community of wives which was permited by Plato in his republic. (See Ariſtotle, polit. 2. 2). For ſince, in both caſes, the offspring muſt be uncertain on the father's ſide, and this uncertainty will be a hindrance to the care of education, (§ 34); ſo far is reaſon from approving ſuch conjunctions, that even thoſe nations which permitted polygamy, or a plurality of wives to one huſband, have given no woman right to have more than one huſband at a time.

* And therefore the contrivance of Papirius Prætextatus to elude his mother, which is ſo well known, was very acute. See Gellius noct. Attic. 1. 23. But ſo far were the Romans from permitting a plurality of husbands, that the moſt barbarous nations never admitted of it, tho' ſome have allowed the promiſcuous uſe of wives. See Puſendorff, law of nature, *&c.* 6. 1. 15.

Sect. XXXVI.

Arguments for polygamy.

The queſtion about the lawfulneſs of *polygamy*, or *a plurality of wives*, is more difficult. For, 1. Such a conjunction does not hinder propagation. Nor, 2. Does it render offspring uncertain. Beſides, 3. Many nations, even the people of God, have approved of this, and ſeemed to think themſelves happy in having the privilege of taking home many wives. Not to mention, 4. The Turks, and other eaſtern nations, where it is not worſe in reſpect of procreation and education, when one has many wives, than when one has but one wife. And, 5. Sometimes the huſband's vigour, ſometimes the wife's intolerable humour, or her barrenneſs, ſometimes the intereſt of the republic, and ſometimes other reaſons plead in favour of Polygamy.

* Thoſe are the principal arguments by which the defenders of polygamy ſupport their opinions taken from reaſon. And as for thoſe fetched from the ſacred writings, they belong to another chair. This queſtion has been greatly agitated by Huldericus Neobulus, of whoſe book on the ſubject ſee Seckendus Hiſt. Lutheran. 3. 79. addit. 3. litt. 10. p. 281. Bernardus Ochinus, who is expreſly refuted by Beza de polygamia, and by Jo. Gerard de conjugio, § 207. of which author ſee Bayle's dictionary ſub Ochinus; by Jo. Lyſerus, who under the aſſumed names of Theoph. Alethæus, Vinc. Athanaſius, & Gottl. Wahrmundi, has publiſhed ſeveral books on this ſubject, of which ſee Vinc. Placcius Theatr. pſeudonym. n. 97. 277. 2867. Againſt thoſe authors have written Jo. Brunſmannus, Jo. Muſæus, Diekmannus, Feltmannus, Geſenius (who has been injurious to Pufendorff) Jo. Meyerus and others. The defence of polygamy hath been undertaken by one whoſe better ſtudies ſuch a deſign ought not to have interrupted, Daphnæus Arcuarius, not to mention the late writings of a lawyer of Dantzick, in every body's hands, which have been of very little ſervice, if not of great hurt to the church.

Sect. XXXVII.

It is not agreeable to right reaſon.

But ſince it is the duty of married perſons to avoid every thing repugnant to the end of a married ſtate (§ 27), and all diſcord about the end or means is contrary to ſociety (ibid.) and ſo much the more unavoidable as the ſociety is more numerous (§ 18); hence we juſtly conclude, that polygamy is leſs agreeable to right reaſon than marriage with one woman; wherefore, ſince the law of nature obliges us to chooſe the beſt of two goods * (l. 1. § 92), we are rather obliged to monogamy than to polygamy.

* This is moſt certain, that diſcord, jealouſies, envy, and hatred, muſt ariſe among many wives. But in this inteſtine war, what place is there for harmony, or conſent in the education of children of different and jarring mothers? The families of Abraham and Jacob ſaw ſuch ſad effects, Gen. xvi. 5. xxi. 9. xxix. 30. xxx. 1. And what may not happen when men maintain at home many wives, which inſtead of being virtuous and good, are furies?

Sect. XXXVIII.

An anſwer to the firſt and ſecond argument.

Nor are the arguments brought in defence of it of ſuch force as to oblige us to deſert our cauſe. For grant, 1. That the procreation of children is not hindered by polygamy, yet the other end, convenient education, which ought not to be ſeparated from the former, is hindered by it (§ 26 and 37). 2. Tho' progeny be certain in polygamy, yet this certainty does not hinder but each mother may only love her own children, and proſecute the reſt with terrible hatred, or at leaſt endeavour, by novercal arts, to render them leſs agreeable to the father than her own. 3. To oriental nations, of a hoter temper, and more prone to venery, which approved of polygamy, we may oppoſe examples of more civilized nations which diſapproved it. Nor is the practice of the Jews a rule, ſince our Saviour teaches us, that all things in which the Jews diſſented from the primitive rule, were rather tolerated than approved by God in them; "For the hardneſs of their hearts," Mat. xix. 8.

* For no reaſon can be given why more regard ſhould be paid to the primitive inſtitution of marriage in the queſtion about divorces, than in that about polygamy. Nay, from what our Saviour ſays of divorce, we may draw an argument againſt the lawfulneſs of polygamy. For if he who unjuſtly divorces his wife and marries another, be

guilty of adultery, he is certainly much more guilty of adultery, who, while his marriage ſubſiſts, takes another wife, becauſe the reaſon given by our Saviour, *viz.* that God, when he inſtituted matrimony, willed that "two ſhould become one fleſh, Mat. xix. 5." is no leſs an obſtacle to polygamy than to divorce.

Sect. XXXIX.

An anſwer to the fourth and fifth arguments.

Of the ſame nature are all the other arguments by which polygamy is defended. For, 4. What is ſaid of domeſtic quiet and peace among the Turks and other eaſtern nations, is partly falſe, according to the annals of theſe countries, and is partly obtained by means repugnant to the matrimonial ſociety *. And what, pray, 5. is more incredible, than that one is not ſufficient for one? Or what is more uncertain, than that when one has an immodeſt or indiſcreet wife, that the other he brings home ſhall be more modeſt and diſcreet? or that if one be barren, the other ſhall be more prolific? what if he ſhould get two furies inſtead of one? But all their arguments depend upon a principle we have already ſhewn to be falſe.

Sola eſt utilitas juſti prope mater & æqui. (l. 1. § 78)

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* It is known that in the eaſtern countries, thoſe who have plurality of wives, keep them in a *Seraglio*, as in a priſon, and that they are no better than ſervants. Hence Ariſtotle. Polit. 1. 2. ſays, That among the barbarous nations, wives and ſervants are of the ſame rank. See a remarkable paſſage in Plutarch. in Themiſt. p. 125. "They are confined by eunuchs; and the education of children, of the male-kind eſpecially, is ſeldom truſted to the mother, but for the moſt part, to ſome eunuch or ſervant. Now, how contrary all this is to the end of the matrimonial ſociety, is too obvious to be inſiſted upon.

Sect. XL.

Whether certain degrees are prohibited by the law of nature.

It is a no leſs difficult queſtion, whether by the law of nature reverence is to be paid to blood, and whether, for that reaſon, it prohibits marriage within certain degrees of kindred and affinity? For ſince ſuch marriages are not repugnant to the end of matrimony, they cannot be forbidden on that account. Yet, ſince marriages between aſcendants and deſcendants are attended with the greateſt and moſt hurtful confuſion of different natural relations amongſt perſons, reaſon itſelf perceives and acknowledges their turpitude; and therefore the Civilians juſtly aſſerted theſe marriages to be inceſt by the law of nations, l. 38. § 2. D. ad leg. jul. de adult. And they likewiſe with reaſon pronounced marriages between perſons of the nearer degrees of kindred, to be contrary to modeſty and virtue, l. 68. D. de ritu nupt.

* For nature cannot approve of contradictory things, but ſuch are the obligations of wife and mother, father and brother, mother and ſiſter: They cannot ſubſiſt in the ſame perſon without the greateſt confuſion. Such marriages therefore cannot be lawful which confound theſe relations together in one and the ſame perſon, as in the marriage of Herſilus and Marulla, according to an old epigram.

Herſilus hic jaceo, mecum Marulla quieſcit:
Quæ ſoror, & genitrix, quæ mihi ſponſa fuit.
Me pater e nata genuit: mihi jungitur illa:
Sic ſoror & conjux, ſic fuit illa parens.

Such marriages were looked upon by the Pagans as contrary to nature. See Ovid. Metam. 10. v. 9. where Myrra thus ſpeaks:

Tune ſoror nati, genitrixque vocabere fratris?
Nec, quod confundas & jura & nomina, ſentis?

Among collaterals, the ſame degree of confuſion is not to be feared: Yet a certain confuſion of relations cannot be avoided, if the ſame perſon be ſiſter and wife. And therefore we think it better to aſſert, that ſuch marriages are not permitted, unleſs abſolute neceſſity render them excuſable. And thus it is very accountable why the children of Adam married without being guilty of inceſt, tho' they are who now do the ſame. For this prohibition of certain degrees is of thoſe laws of nature which muſt yield to providential neceſſity (l. 1. § 162).

Sect. XLI.

Of ſolemnities.

Since all copulation without marriage is unlawful, and there is no other lawful way of propagating mankind but by marriage (§ 34); the conſequence is, that it is the intereſt of the married parties, and of the children, that the deſign of contracting the matrimonial ſociety ſhould be teſtified by ſome external ſign, that thus a legal wife may be diſtinguiſhed from a concubine, and legitimate children from illegitimate ones; which, ſince it cannot be done conveniently, unleſs marriage be publicly celebrated, we may eaſily ſee a good reaſon why almoſt all nations have judged ſome ſolemnities requiſite to indicate nuptial conſent, and have appointed ſome ſuch.

* There is no barbarous nation which hath not inſtituted ſome rites of marriage: And therefore it is not to be wondered at, if all civilized nations have; ſuch as the Hebrews, the Greeks and Romans, *&c.* concerning which cuſtoms, antiquaries have wrote ſuch large and learned volumes, that I need not ſay one word on this ſubject. Let me only add, that the Romans, when their ancient diſcipline degenerated, took little or no care in this matter; and hence it was, that it was frequently ſo difficult to determine whether a woman was a wife or a concubine; and it was neceſſary to have recourſe ſometimes to the articles or inſtruments of dowry to determine this queſtion, l. ult. Inſt. de nupt. and ſometimes the thing could only be judged of from the condition or quality of the woman, l. 24. D. de ritu nupt. l. 31. pr. D. de donat. But how eaſily might theſe diſputes have been avoided by performing marriage with certain rites?

Sect. XLII.

Of the conjugal duties ariſing from the nature of the pact.

The conjugal duties are obvious. For, ſince the nature of this ſociety requires conſent (§ 32), which cannot be hoped for without love and concord,

cord, the conſequence is, that huſband and wife are obliged to love one another; and not only to manage their common family intereſt * with common care and prudence, but mutually to aſſiſt one the other, eſpecially in the education of their children, and to have one common fortune.

* Indeed what effect this community of goods ought to have after the deceaſe of one of the parties, or what part of the common ſubſtance belongs to the ſurviver, and what to the defunct's heirs, muſt be determined by pacts or by civil laws. But that while marriage ſubſiſts, all ought to be in common, right reaſon teaches us. For ſince aſſociates, by unity of will, are one perſon (§ 19), and therefore have all the things and rights belonging to their ſociety in common (§ 20), it is manifeſt, that the ſame muſt hold with reſpect to perſons united by marriage; and ſo, however it came to be afterwards, was it anciently among the Romans, according to Dionyſ. Halicar. Antiq. Rom. l. 2. p. 95. for by Romulus's law, there was, "Omnium bonorum & ſacrorum communio." And even their later laws appointed, "Communem utrique conjugi bonorum uſum." Whence it is evident why Modeſtinus retaining the old definition of marriage, and agreeably to his own time, ſays it is, "Conjunctio maris & fœminæ, conſortium omnis vitæ, divinique & humani juris communicationem," l. 1. D. de ritu nupt.

Sect. XLIII.

Of thoſe ariſing from the end of matrimony.

Theſe are the duties which ariſe from the very nature of conſent and ſociety. But from the end of matrimony we infer, that huſband and wife are obliged to cohabit, and to allow to one another only the uſe of their bodies, and therefore to abſtain from all adultery, whoredom, and ſtolen love *; to love all their children with equal affection; and that the one ought not, by any means, to diſappoint or render ineffectual the other's care about their education.

* Some think this duty belongs to the wife only, and not to the husband, becauſe, if he neglects it, the children

are not rendered uncertain. But tho' all copulation be unlawful which renders progeny uncertain, yet it does not follow, that all is lawful which does not render it uncertain (§ 38). See Gundlingii diſſert. an major a feminis, quam a viris, caſtitas requiratur. We draw an argument from this principal rule of natural juſtice, " what one would not have done to him, *&c.*" But ſurely the husband would not have his wife to love another man more than him, or grant any other the uſe of her perſon. And therefore the husband is bound to the ſame duty. See Chryſoſtom. Homil. 19. in 1 Cor. vii. Lactantius Inſt. divin. 6. 3. Hieron. ad Ocean. & can. 20. Cauſſ. 32. quæſt. 5. But at the ſame time, we grant that the wife's unchaſtity is more repugnant to the end of marriage than the husband's.

Sect. XLIV.

Whether the huſband has any ſuperior command?

Moreover, it is manifeſt that this ſociety would be very imperfect, if it were equal in ſuch a manner that neither had the faculty of deciding in any common diſpute, becauſe it may happen, in many caſes, that the two may differ in their opinions about the choice of means, and between two, in ſuch caſes, the diſpute would be endleſs; wherefore, tho' the prudenteſt counſel ought to be preferred (l. 1. § 92) *, yet, becauſe it would often be controvertible which of the two parties in this ſociety was in the right, there is reaſon to approve the common practice in this matter, and ſo to give a certain prerogative to the huſband about affairs belonging to the common ſafety or advantage of the ſociety.

* For ſince the parties are bound to all, without which the ends of the ſociety, procreation and convenient education, cannot be accompliſhed (§ 27); they are obliged to conſent to this prerogative in one of them, without which conſent in the ſame means could not be expected. Now, becauſe this prerogative in a ſociety of equals is due to the more prudent, and in the conjugal ſociety the husband for the moſt part is ſuch, the wife is, for this reaſon, obliged to conſent to the husband's prerogative.

Inferior matrona ſuo ſit, Priſce, marito :
Non aliter fuerint femina virque pares.
Martial. Epig. 8. 12.

See Plutarch's conjugal precepts, p. 139.

Sect. XLV.

The nature of it.

But ſince this prerogative of the huſband extends only to affairs belonging to the welfare and intereſt of the ſociety (§ 44); the conſequence is, that this marital authority ought not to degenerate into ſuch an empire of a maſter, as we have already obſerved to have taken place in ſome barbarous nations *; nor does it reach to a power of death and life, as it did in ſome nations. Gellius 10. 23. Tacit. annal. 13. 32. Cæſar. de bello Gallico, 6. 19. Tacit. de moribus German. c. 19. much leſs does it extend to a power of ſelling or lending one's wife to another, a cuſtom among ſome nations, and not diſapproved of by the Romans, Plut. in Catone, p. 770. Tacit. annal. 5. 1. Dio Caſſ. hiſt. l. 48. p. 384. But it conſiſts in the right of directing a wife's actions by prudent counſel, and of defending her; and in the right of chaſtiſing an immodeſt one ſuitably to the condition and rank of both * (§ 21); and in divorcing her for ſuch juſt cauſes as ſhall be afterwards treated of (§ 21).

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* I ſay, chaſtiſe ſuitably to the rank and condition of both parties; becauſe, ſince they are one perſon (§ 19), an ignominious chaſtiſement of a wife reflects ignominy on the husband. And becauſe both are bound to take care of their reputation (l. 1. § 153), a husband acts contrary to his duty if he chaſtiſes his wife in a manner that tends to hurt both her and his character. This imprudent diſcipline of husbands is ſeverely laſhed by Plutarch in his conjugal precepts, p. 139. " As ſome ſoft effeminate perſons who are not able to mount their horſes, teach them to ſtoop to them, ſo ſome husbands, who eſpouſe rich and noble wives, are at no pains to amend themſelves, but accuſtom their wives to ſubmiſſion, that they may more eaſily rule over them, tho' regard ought to be had in the uſe

of the curb, as in the one caſe to the ſpirit of the horſe, ſo in the other to the dignity of the wiſe."

Sect. XLVI.

Whether this right of the husband may be changed by pact?

But becauſe this prerogative is only due to the huſband on account of his preſumed greater prudence, and of the matrimonial burdens incumbent on him (§ 44); ſince it not ſeldom happens that a woman of ſuperior judgment and ſpirit is married to one of an inferior one, a richer to a poorer, a queen to a private man; therefore, in all theſe caſes, the woman may ſtipulate the prerogative to herſelf *. None can deny, for we have many examples of it, that a queen may marry a prince, without giving him any power in her dominions, and likewiſe retain the ſuperior power in the conjugal ſociety; except when the conſort, being heir to a kingdom, chuſes to transfer the empire itſelf to her huſband, contenting herſelf ſolely with the dignity.

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* Thus what is related by Ariſtotle, Politic. 5. 11. and by Sophocles in Oedipo Colon. v. 354. of the wife's power over the husband among the Egyptians, was by pact, as Diodor. Sicul. Bibl. 1. 27. informs us. But all the queſtions relating to a Queen's husband are fully handled by Jo. Philip. Palthenius, in a diſcourſe on this ſubject. We have a noted inſtance of this in Earl Bothwell, who, when he was to be married to Mary Queen of Scotland, took an oath, "That he ſhould claim no ſuperior degree or pre-eminence on that account; but that he ſhould continue to be ſubject to the queen as he had hitherto been." Buchanan. rer. Scot. hiſt. l. 16. p. 674. To all that is urged from ſcripture, Gen. iii. 16. 1 Cor. xi. 7. 1 Tim. ii. 11. Epheſ. v. 23. Coloſſ. iii. 18. 1 Pet. iii. 1. Palthenius has given a full reply at great length. But theſe things we leave undetermined, becauſe we proceed upon another foundation.

Sect. XLVII.

The duty of the huſband in bearing

But ſince ordinarily the prerogative belongs to the huſband (§ 44), he cannot refuſe the care of maintaining his wife and children, and of bearing the burdens of matrimony; tho', becauſe the children are common, and both are obliged to common care (§ 42), the wife ought certainly, as far as her eſtate goes, to bear a part of theſe burdens. And hence the origine of dowry among the Greeks and Romans, brought to huſbands by wives, who were not excluded from ſucceſſion to their parents *.

the burdens of the matrimonial ſociety.

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* In ſeveral other nations, women had a portion or dowry given them at marriage, that they might not be quite cut off from all ſhare in their parents eſtate, becauſe they were otherwiſe excluded from ſucceſſion. The ſame was the caſe among the Romans while the *lex voconia*, obtained. But they uſed to give dowries to daughters before it took place; and after it was aboliſhed, tho' married daughters ſhared the paternal and maternal eſtate equally with their brothers. All this matter is elegantly treated by Perizonius, in his diſſertat. de lege Voconia, reprinted by us at Hal. 1722. Hence the Roman lawyers acknowledge, that the dowry was given in order to bear a part of the matrimonial expences or burdens, l. 7. pr. l. 56. § 1. l. 76. fin. D. de jure dot. l. 20. C. eodem.

Sect. XLVIII.

In fine, ſince every thing ought to be avoided that is contrary to the ends of matrimony, becauſe education, which is no leſs the end of matrimony than procreation, requires a perpetual ſociety between man and wife; hence it is plain, that the liberty of divorce, authoriſed by ſome nations, is quite repugnant to the end of matrimony. And yet becauſe an intolerable temper and behaviour of either party no leſs hinder this end than divorce; and a partner cannot be blamed if he ſevers from him an injurious aſſociate (§ 21); we think divorce is not unlawful, when either of the parties behaves themſelves ſo that the end of matrimony cannot be obtained *. Now, that, this ſociety being diſſolved in any lawful way, either may make another marriage cannot be doubted, ſince a partner, his

In what reſpect marriage is indiſſolvable.

partnerſhip with one being diſſolved, has a right to aſſociate another partner, and thus enter into a new partnerſhip *.

* To theſe we refer not only adultery and malicious deſertion, which are pronounced juſt cauſes by the divine law, Mat. v. 32. xix. 9, 1 Cor. vii. 15; but every thing that is an obſtacle to the end of marriage, and renders it unattainable: We do not take upon us to determine, whether our Saviour's phraſe, *παρεκτὸς λόγȣ πορνείας*, Mat. v. 32. ſignifies the ſame with what is called by Moſes, Deut. xxiv. 1. *ſome uncleanneſs*, as Selden ſeems to think; but we are certainly perſuaded, that *πορνείαν* and *λόγον πορνείας*, do not mean the ſame: For *λόγος* ſignifies the condition, nature or proportion of a thing (Syneſ. Epiſt. ad Joannem: *τὸν αὐτὸν λόγον ἔχȣσι*, they are of the ſame nature or rank.) Now, this being the meaning of the word, the ſenſe is, that no other cauſe of divorce is allowable, but ſuch a one as is like to adultery, of the ſame nature with it, *i. e.* no leſs repugnant to the end of matrimony than adultery.

Sect. XLIX.

What is to be ſaid of imperfect marriages.

Tho' all this be required by right reaſon in the conjugal ſociety, yet it is manifeſt that one duty hath a nearer relation to the end of matrimony, and another a more remote relation; and therefore ſociety between a man and a woman does not ceaſe to be marriage, if ſome changes are made in it by pacts; wherefore marriage is valid tho' imperfect; *i. e.* though contracted for the ſake of procreation and education privately, and without any ſolemnity *; nor is that invalid which is called *morgengatic marriage*; nor putative, or reputed marriage, of which Jo. Nic. Hertius hath publiſhed a curious diſſertation.

* To this claſs belongs what is called *mariage de conſcience:* as alſo concubinacy, ſuch as obtained among the Romans, concerning which we have ſaid a great deal in our comment. ad legem Juliam & Papiam, l. 2. c. 4.

For concubine is not to be confounded with whore; and differed only in reſpect of dignity from a legal wife. Whence it is called *unequal marriage*, l. 3. C. de natur. lib. On the other hand, that does not deſerve the name, even of an imperfect marriage, which is called by theſe barbarous terms *ad talacho*, *emancibado*, *caſato di media carta*; and is contracted on this condition, that a man, ſo ſoon as he has children by a woman, may turn her away, or that the woman being pregnant, may deſert her husband when ſhe pleaſes; ſuch the marriages of the Amazons are ſaid to have been, tho' Arrian doubts of the truth of this report, in his expedit. of Alexander, l. 7. p. 291. See Sam. Petit. de Amazonibus, & Caſp. Sagitt. Exercit. ad Juſtin. hiſt. 2. 4. And what is this indeed, but as Seneca expreſſes it, of benefits, 3. 6. exire matrimonii cauſſa, nubere divortii cauſſa? What can be more repugnant to that convenient education, which we have obſerved to be the end of matrimony?

† [It is not unfit to explain what our Author calls, *ex lege morganatica matrimonium ad morgangabicam*, or as the writers on fiefs call it, *ad morgenaticam*, comes from the German *morgen-gab*, which ſignifies a morning preſent. The perſon who marries a woman in the manner here ſpecified, or as the Germans expreſs it, *with the left hand*, the day after his wedding makes her a preſent, which conſiſts in the aſſignment of a certain portion of his goods to her and her future children, after his death, on which condition they have no farther pretenſions. Gregory of Tours calls this *matutinale donum*, l. 9. 19. as Gronovius on Grotius obſerves, who likewiſe refers us to Lindenberg's gloſſary on the Codex legum antiquarum. See Barbeyrac on Grotius, l. 2. c. 8. 8. 3.]

CHAP. III.

Of the duties that ought to be obſerved in a ſociety of parents and children.

Sect. L.

Connection.

BY the conjunction of which we have been treating in the preceding chapter, children are procreated, who abide in ſociety with their parents till they themſelves form new families, and go from under their parents authority. For tho' children, when they come into the world, can neither expreſly nor tacitely conſent to this ſociety; yet, becauſe ſociety may ariſe from preſumed conſent, if, by the nature of the thing, we may judge one to have conſented (§ 16), and the condition of infants requires that they ſhould live in ſociety with others, (§ 16); there is no reaſon why we may not aſſert, that parents and children conſent in the ſame end and means, and conſequently that there is a ſociety between parents and children (§ 13).

Sect. LI.

The end of this ſociety is the convenient education of children.

Becauſe infants, nay, young boys and girls, are not capable of judging how they ought to direct their actions and conduct, God, who willed their exiſtence, is juſtly underſtood to have committed the care of ſuch to others. And ſince he hath implanted not only in men, but in brutes, an ardent affection to ſtimulate them to this duty (§ 26), and men contract marriage for the ſake of procreation and education, or ought to have thoſe ends ſolely in their view in forming this ſociety (§ eod.); the conſequence is, that this duty is principally incumbent on the parents; and therefore that there is no other end of the ſociety between parents and children, but convenient and proper education of children *.

* For tho' a man and woman may join together, not with a view to have children, but merely to ſatisfy their luſt, yet they are not freed from this obligation, becauſe they propoſed another end to themſelves. All impure conjunctions without marriage being repugnant to right reaſon (§ 34), it is no matter what end parents may really have had in their view; but we are ſolely to conſider what end they ought to have had in view; nor is it in any one's power to renounce the preceptive law, which appoints this end of copulation (l. 1. § 13.)

Sect. LII.

This end cannot be gained, unleſs the parents have a certain power.

Education being the end of this ſociety (§ 51); ſince it cannot be carried on without directing the actions of children, the conſequence is, that parents have a right and power to direct their children's actions; they have therefore power over their children, and thus this ſociety is *unequal* and *rectoreal*. But as the duties of every ſociety muſt be deduced from its end (§ 14); ſo this parental power muſt be eſtimated by its end; and therefore it is a right or power competent to parents, to do every thing, without which the actions of children cannot be ſo directed, as that the end of this ſociety may be obtained.

* Hence then the origine of that power belonging to parents by the law of nature. God wills that children exiſt, *i. e.* that they be preſerved and made happy (l. 1. § 77): but they cannot be preſerved and live happily without proper education (§ 51); and they cannot be properly educated unleſs their actions be directed: Therefore God wills that the actions of children be directed by thoſe who educate children. But the right of directing the actions of children is power over children (§ 52): And therefore God wills that parents exerciſe power over their children. We therefore ſend Hobbes a packing, de cive, 9. 3. who derives paternal power from occupancy. Nor does Pufendorff's way, (of the law of nature, *&c.* l. 6. c. 2. § 4.) ſatisfy

us, who derives it partly from the nature of ſocial life, and partly from the preſumed conſent of children. For preſumed conſent to this ſociety, which we likewiſe acknowledge can be inferred from no other principle than that we have now laid down.

Sect. LIII.

It belongs to both parents.

Since the duty of education is incumbent upon both parents (§ 51), the conſequence is, that this power muſt be common to both parents; and therefore, by the law of nations, this power cannot belong to the father only, as the Roman law affirms; yet, ſince regularly the father, as huſband, has the prerogative in the conjugal ſociety (§ 44), it is plain, that when parents diſagree, greater regard ought to be had to the father's than to the mother's will, unleſs the father command ſomething manifeſtly baſe and hurtful to his children: For to ſuch things, as being morally impoſſible, neither mother nor children can be obliged.

Sect. LIV.

It paſſes to Grandfathers, grandmothers, tutors, nurſes, preceptors, adopters.

Beſides, becauſe the duty of education, whence the parental power takes its riſe, is ſometimes undertaken, upon the death of the parents, by grandfathers and grandmothers, or other relatives, through affection; ſometimes it is committed by the parents themſelves to others, whom they judge more fit for the charge; ſometimes a ſtranger deſires a parent would devolve that care upon him; it therefore follows, that this power, as far as it conſiſts in the right of directing the actions of children, is, in theſe caſes, devolved upon *grandfathers*, *relations*, *pedagogues*, and thoſe who *adopt* * children, or take them *under their care*; and therefore all ſuch perſons may exerciſe the parental power as far as the education undertaken by them requires.

* Adoption therefore is not contrary to the law of nature; but for another reaſon than that upon which it is found-

ed in the Roman law. For children being by that law under the power of the father, *i. e.* in domino juris quiritium, l. 1. D. de rei vind. Hence they inferred, that the father could alienate and ſell his children, as well as the other things (mancipi) in his full poſſeſſion and power. And thus adoptions were made by alienation and ceſſion of right, as we have ſhewn on another occaſion. Beſides, men only, and not women, could adopt, except by a ſpecial indulgence from the prince to conſole them for the loſs of their children, § 10. Inſt. l. 5. C. de adopt. becauſe they could not have any perſon under their power. But we derive adoptions not from any dominion belonging to the father, or to both parents, but from the duty of education, and the power of directing the actions of children, neceſſary to that end; which duty, ſince ſometimes it may be better performed by ſtrangers, or at leaſt as conveniently as by the parents themſelves, there is no reaſon why they may not reſign it to others, willing to undertake it, and thus give them their children in adoption. Nor is there any difference whether a man or a woman, a married or unmarried perſon adopt, becauſe this adoption does not imitate nature, but only the duties of parents. And we have an example of this kind of adoption, not only among the Egyptians, Exod. ii. 10. but alſo among the Romans, among whom Lact. de mort. perſeq. cap. 50. tells us, that Valeria Auguſta, not on account of barrenneſs, but to conſole her for the loſs of her children, adopted Candidianus.

Sect. LV.

Parents have the power of commanding, forbiding, chaſtiſing.

Since this power conſiſts in the right of doing every thing neceſſary to obtain the end of the ſociety above defined (§ 52); it is obvious, that parents have a right to preſcribe to their children what they ought to do, and to prohibit what they ought not to do; and not only to chide and reprove the ſtubborn and diſobedient, but to chaſtiſe them, as the circumſtances of the caſe may require; and to uſe other ſeverer methods to reduce them into good order and due obedience; provided it be done prudently, and with proper regard to age, the dignity of the family, and other circumſtances*.

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* Grotius, of the rights of war and peace, 2. 5. 22. and Pufendorff of the law of nature, *&c.* 6. 2. 7. juſtly obſerve, that this power is greater over younger than more adult children. For ſince the father may do every thing that education, the end of this ſociety, makes requiſite (§ 52); becauſe children of an imperfect underſtanding can hardly diſcern by themſelves what is right, the very nature of the thing requires, that parents ſhould direct their actions, and have a right to compel them to learn ſome uſeful art, as likewiſe to embrace the religion they themſelves approve, and to chaſtiſe with the rod, or otherwiſe, the diſobedient. But this a good father will not do to a more grown up child, who, his judgment being more ripe, ought to be induced to do what is right, rather by authority, and the weight of good arguments, than by ſeverity and rigid command; nor ought he to force any thing upon ſuch a child by way of command with reſpect to his future manner of life, againſt his will and inclinations. Thus, *e. g.* parents are right in forcing a boy againſt his will to attend the ſchool; but it would be wrong to force one come to the years of diſcretion, to marry, or to follow a profeſſion he does not like, *&c.* This we obſerve, in oppoſition to Zieglerus, who in his notes on Grotius, 2. 5. 2. thinks this diſtinction ought not to be admitted.

Sect. LVII.

Whether it extends to the power of life and death?

Hence it is plain, that the end of this ſociety does not require the power of life and death over children; unleſs, perhaps, in a ſtate of nature, where parents preſide over a large and diffuſed family as its heads; and in this caſe they exerciſe ſuch power rather as princes and magiſtrates than as parents *. Whence again we infer, that the law of nature does not approve of the antient rigid power of the Romans, which was afterwards diſapproved of even by them; and therefore Juſtinian juſtly affirms, § 2. Inſt. de patri. poteſt. "That no other people ever exerciſed ſuch a power over children as the Romans did."

* This is plain, becauſe that power of life and death was proper to the father, and not common to both parents,

and extended even to wives and widow-daughters-in-law. We have an example of the latter in Judah, Gen. xxxviii. 24. who, when he found that his Daughter-in-law Tamar had play'd the harlot, ordered her to be brought forth and burnt. Thus kings, becauſe they are in a ſtate of nature, exerciſe this power over their wives, children, and their whole family; and this power fathers in ancient times exerciſed, not as fathers, but as ſovereigns. Thus Philip of Macedon ſat as judge between his ſons, Liv. 40. 8. Thus Claudius Cæſar puniſhed Valeria Meſſalina his adulterous wife, Sueton. in Claud. cap. 26. not to mention more modern examples which have been examined by others. See Barbeyrac on Puſendorff, of the law of nature and nations, 6. 2. 10.

Sect. LVII.

Whether parents have the power of ſelling, of hurting delinquents, and of acquiring by their children?

Much leſs then have parents, by the law of nature, a right to expoſe their children to ſale, of inflicting hurtful puniſhments upon them for faults, and of acquiring to themſelves all that comes to their children, tho' all theſe things were approved of by the antient Roman laws. For none of theſe things is of ſuch a nature, that the end of ſociety cannot be obtained without it (§ 52). But ſince this power conſiſts in directing the actions of children (§ 52), parents cannot be refuſed the right of commanding certain work from their children, ſuitable to their condition, and of making gain by their labour; nor of adminiſtrating what comes to their children by the favour of men, or of providence *.

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* For ſince children themſelves, while their judgment is imperfect, are ſubject to the direction of their parents; why may not their goods be likewiſe adminiſtred by them? But may this adminiſtration be gainful to them? I do not doubt of it. Whatever things children ſtand in need of, ſuch as clothes, meat, lodging, the expence of education, *&c.* they have a right to demand them from their parents. They therefore do not ſtand in need of fruits or profits, whereas the parents often greatly want them for the ſupport and education of their children. With what face then can

children demand reſtitution of fruits or profits from their parents, whom they can never repay, if they would give up themſelves and their all to them? Iſmene ſays well in Sophocles, Oedip. Colon. v. 523.

Patrem cura: nam parentum cauſſa
Etſi quis laborat, laborum tamen non meminiſſe debet.

Sect. LVIII.

The foundation of the duties of parents to their children.

We have ſaid enough of the power of parents. As to their *duties*, they are very obvious. For they are eaſily deducible from the end of this ſociety. Education is the end of this ſociety, and therefore it is ſelf-evident, that parents are obliged to every thing without which this end cannot be obtained, and to avoid every thing contrary to it (§ 24). But it is worth while to give a full view or idea of education, that thereby the duties, both of parents and children, may the more clearly and certainly appear.

Sect. LIX.

Of education, wherein it conſiſts.

The natural affection implanted in parents, inculcates, as we have already obſerved (§ 26) the obligation of parents to educate their children. Now, the love which parents owe to their children, is *a love of benevolence* (l. 1. § 85), which conſiſts in delighting to preſerve and encreaſe, to the utmoſt of our power, the happineſs of an inferior and more imperfect being (ibid.); the conſequence from which is, that parents are not only bound to take care of the conſervation of their children, but likewiſe to lay themſelves out to promote their happineſs to the utmoſt of their power. And in this does education conſiſt, by which nothing elſe is underſtood but the care of parents to preſerve their children, and to make them as perfect and happy as they can *.

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* For what ſo great merit is there in begetting children, if care be not taken about their conſervation? And what

ſignifies it to have preſerved them, if they are not ſo educated as to be rendered capable of true happineſs? So Seneca of benefits, 3. 31. Ad bene vivendum minima eſt portio vivere, *&c.*

Sect. LX.

It is the duty of parents to preſerve the health, ſoundneſs, &c.

If parents be obliged to the preſervation of their children (§ 59), the conſequence is, that they are not only bound to provide for them all the neceſſaries of life *; *i. e.* cloaths and food, according to their condition of life, but likewiſe to take care of their health, and to preſerve their bodies ſound and intire in all their members, as much as that lies in their power; and therefore to keep them from gluttony, luxury, laſciviouſneſs, and all the other vices which tend to enervate, weaken, or hurt their bodies; and, on this account, not raſhly to leave them to themſelves, or without ſome guardian.

* To this claſs belongs chiefly ſuckling. For that the mother is obliged to this is evident, from the care of nature to furniſh her with ſuch plenty of milk, till the child's ſtomach is fit to receive and digeſt more ſolid food. Thoſe mothers are therefore truly neglectful of their natural duty, who either for their own eaſe and conveniency, or for the ſake of preſerving their ſhape, delegate this care to nurſes, often of little worth, if not bad women, as the heathens themſelves have acknowledged, and proved by many ſolid arguments. See Plutarch on education, p. 3. Aul. Gell. noct. Attic. 12. 1. But becauſe neceſſity exeems one from the obligation of an affirmative law (l. 1. § 114), mothers of a delicate conſtitution, or who have not milk, are not blameable if they give their child to a good nurſe. But what care a mother ought to take in this matter, is elegantly deſcribed by Myia in a letter to Phyllis, apud Tom. Gale Opuſcul. Mythol. Eth. & Phyſic. p. 750.

Sect. LXI.

What is contrary to this duty.

To this duty are directly contrary, endeavours to bring about abortion, expoſing infants, abdicating and diſinheriting them without a juſt cauſe *; denying them neceſſary ſuſtenance, and other ſuch crimes, repugnant to the end of this ſociety. They chiefly are very blameable, nay, unworthy of the name of parents, who abandoning their children, or, by their careleſneſs about them, are the cauſe of their receiving any hurt in any of their ſenſes, organs or members; this impiety of the parents is ſo much the more deteſtable, that the ſoundneſs of their ſenſes, and the integrity of their members, belong not only to the preſervation, but to the happineſs of children.

* What difference is there betwixt murdering children and denying them neceſſary ſuſtenance? l. 4. D. de agnoſ. & alend. lib. But thoſe parents withhold neceſſary ſuſtenance from their children, who abandon or deſert them, or diſinherit them without a cauſe: Nay, thoſe laws are reprehenſible which give ſo much indulgence to parents, as to allow them to treat their children as they pleaſe, or at leaſt pay more regard to paternal power than to natural equity. For who can chooſe but blame the laws of the Tarquinians, which ſuffered the teſtament of Demaratus to hold good, "who not knowing that his daughter-in-law was pregnant, died without mentioning his grand-child in his teſtament; and thus the boy being born after his grandfather's deceaſe, to no ſhare of his eſtate, was on account of his poverty called Egerius." Liv. 1. 34. And who, on the other hand, does not approve of Auguſtus, "who, by his decree appointed C. Tettius, an infant diſinherited by his father, to inherit his father's eſtate by his authority, as father of his country, becauſe the father had acted moſt iniquouſly towards his lawful ſon, in depriving him of his right by his father, Valer. Max. 7. 7.

Sect. LXII.

The underſtanding of children ought to be improved.

Since parents are obliged to promote the perfection and happineſs of their children to the utmoſt of their power (§ 59), to which belongs the cultivation of their underſtandings, in order to render them capable of diſtinguiſhing true good from evil (l. 1. § 146), it is certainly the duty of parents to inſtil early into the minds of their children the principles of wiſdom, and the knowledge of divine and human things, or to commit them to the care of proper maſters to be poliſhed and informed by them, and to ſave no expence in inſtructing and improving them, within their power, and agreeable to their rank. Whence we alſo conclude, that parents are obliged to give due pains to find out the genius of their children, that they may chooſe for them a kind of life ſuitable to their genius, rank, and other circumſtances; and that being choſen, to exert themſelves to the utmoſt for qualifying them to act their part on the ſtage of life with applauſe*.

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* Since one and the ſame perſon often ſuſtains ſeveral different characters, as Hertius has ſhewn in a diſſertation on the ſubject, education ought to be ſo modelled, that children may not only be fit for the way of life choſen for them, but likewiſe to act a becoming part in other characters. Hence, becauſe children ought to be qualified not only to be good merchants or artizans, but likewiſe to be good citizens; the education of children ought to be accommodated to the ſtate and form of the republic to which they belong, as Ariſtotle has wiſely obſerved, Polit. 5. 9. adding this reaſon for it, " That the beſt laws are of little advantage, unleſs the ſubjects are early formed and inſtituted ſuitably to them (ſi leges ſint populares populariter, ſin oligarchicæ, oligarchice), for if there be an unſuitable diſpoſition to the frame of government in any one of the ſubjects, the ſtate will feel it."

Sect. LXIII.

Their will or temper ought to be rightly framed.

Since the will or temper is the ſeat of that love by which we perceive true good or happineſs, parents do nothing, whatever care they may take about perfecting the underſtanding of their children, if they neglect the formation of their will or temper. Parents, who take not proper pains and methods to inſpire early into their minds the love of piety and virtue, but train them up to vice, if not to groſs and manifeſt vices, yet to cunning, avarice, ambition, luxury, and other ſuch vices, by repreſenting theſe vices to their minds under the falſe ſhew of prudence, frugality, ſpirit, taſte, and elegance. Parents, in fine, who ſet a pattern of wickedneſs before their children, and ſadly corrupt their minds by a continued courſe of vitious example *.

* Thoſe are the fatal methods by which we may obſerve children of the beſt natural diſpoſitions to be corrupted and ruined. For as none is ſo careleſs about his own reputation as to affect to ſhew his vices; and therefore every one endeavours to hide his crimes under ſome falſe ſemblance of prudence and virtue, ſo parents, for the moſt part, are not at ſo much pains to teach their children to live honeſtly and virtuouſly, as to teach them to deceive others by a counterfeit appearance of virtue and probity, *i. e.*

Ut Curios ſimulent, & bacchanalia vivant.

To this end are all their precepts directed, and this is the leſſon their example inculcates. Inſomuch that when ſome children, through the goodneſs of their natural diſpoſition, are in the way to virtue and real honour, their excellent turn of mind is depraved gradually by the bad example of their parents. For as thoſe who travel in a dark night, are eaſily miſled out of their right road by falſe lights; ſo the beſt diſpoſitions are eaſily corrupted, if bad examples are continually ſeducing them; eſpecially, if their parents themſelves are by their practice perpetually ſhewing them the inutility of all the diſcipline beſtowed upon them. How mindful ought parents to be of that important advice of Juvenal, Sat. 14, v. 44.

Nil dictu fœdum viſuque hæc limina tangat,
Intra quæ puer eſt, procul hinc, procul inde puellæ
Lenonum, & cantus pernoctantis paraſiti.
Maxima debetur puero reverentia. Si quid
Turpe paras, nec tu pueri contemſeris annos:
Sed peccaturo obſiſtat tibi filius infans.

Sect. LXIV.

Above all the mind is to be recalled from the purſuit of pleaſure.

Nothing is ſo flattering to youth as pleaſure and eaſe; and therefore parents ought to take care not to educate their children too ſoftly and delicately; not to ſuffer them to become languid and indolent, to diſſolve in eaſe and lazineſs; not to breed them up to luxury and high living; but to inure them to hardſhip, to bear heat and cold, and to content themſelves with homely fair, with whatever is at hand. For while the children of peaſants are thus bred up to work, and to homely diet, do we not ſee how they ſurpaſs the youth of higher birth in health and vigour *?

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* There is an excellent epiſtle to this purpoſe from Theanus to Eubules, apud Thom. Gale Opuſcul. ethic. phyſic. & mytholog. p. 741. "It is not education, but a perverſion and corruption of nature, when the mind is inflamed with the love of pleaſure, and the body with luſt." Nor are the precepts of Plutarch, in his excellent treatiſe of education, leſs grave and ſerious.

Sect. LXV.

And from bad companions.

Nothing ſo much depraves youth as bad company; and therefore parents ought to be watchful that their children do not aſſociate themſelves with corrupt companions, but with their equals, and ſuch as are well educated. For tender minds are prone to imitation *, and eaſily moulded into any ſhape by example, but averſe to admonition; and the danger of their being corrupted is ſo much the greater, that they are ſo little capable of diſtinguiſhing flatterers and paraſites from true friends, corrupt from good maſters, or inducements to vice from wholeſome precepts.

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* How propenſe youth is to imitation, is plain from the many inſtances of thoſe, who being bred up among the brutes, acquire their geſtures, their voice and fierceneſs to ſuch a degree, that they are hardly diſtinguiſhable from

them. Inſtances of this ſort are collected by Lambert Schaffnab. ad annum 1344. Hartknoch. de Polon. lib. 1. cap. 2. p. 108. Bern. Connor. Evang. med. art. 115. p. 181. & de ſtatu Polon. part. 1. ep. 6. p. 388. In the Leipſick Acts 1707, p. 507. we are told of a deaf and dumb boy, who, by frequenting the church, begun to imitate all the motions and geſtures of thoſe he ſaw there, in ſuch a ſerious-like manner, that the clergy could no longer doubt of his having ſome ſenſe of religion: And yet, when he afterwards had learned to ſpeak, it could not be found out in any way, that he had ever had any notion of religion. If ſuch be the force of example and imitation, is it to be wondered at, that boys receive, as it were, a new nature from the ſociety they frequent, and are by drinking Circe's cup transformed into beaſts.

Sect. LXVI.

Children owe their parents a love of reverence and obedience.

The duties of children to their parents are eaſily deducible from the ſtate and right of parents, and from the end of the ſociety we are now conſidering. For ſince parents have the right of directing the actions of their children, hence it is plain, that they ought to be regarded by their children as ſuperior and more perfect than them; and conſequently that they ought to be loved by them with a love of reverence and obedience * (l. 1. § 85); whence it follows, that children ought to pay all reverence and obedience to their parents (l. 1. § 86), ſuch reverence and obedience as is due to their perfection and ſuperiority (l. 1. § 87).

* Hence, all the ancients have acknowledged, that next to the love due to God, is that owing to parents. So Gellius Noct. Attic. 4. 13. to prove which, he quotes Cato, Maſſurius Sabinus & C. Cæſar. The golden verſes of Pythagoras are yet more expreſs to this purpoſe.

Primum immortales Divos pro lege colunto
Et jusjurandum: heroas, clarum genus, inde.
Dæmones hinc, terris mixti, ſua jura ferunto.
Inde parentis honos ſequitor: tum ſanguinis ordo.

In commenting upon which verſes in his way, Hierocles obſerves, that in parents there is the image of God. And

Simplicius ad Epictet. Enchirid. c. 37. p. 199. tells us, "That the more ancient Roman laws pay'd ſuch veneration to parents, that they did not heſitate to call them (Deos) *Gods*: And out of reverence to this divine excellence, they called a father's brothers (Thios) *Divine*, to ſhew the high reſpect they thought was due by children to parents."

Sect. LXVII.

Veneration is due to parents.

Becauſe parents ought to be revered with a reſpect ſuitable to their perfection (§ 66), none can doubt but children are bound to prefer their parents before all others, to ſpeak honourably to them, and of them; yea, to take care not ſo much as to ſhew diſreſpect by any look. And tho' it may happen, that one of the parents, or both, may not have the perfections requiſite to beget veneration (l. 1. § 87) *, yet it is the duty of a good child to overlook theſe imperfections, and rather to bear injuries from them with patience, than to omit any thing which nature itſelf requires of children.

* For even bad parents are ſtill parents, *i. e.* they are, as Simplicius, ibidem p. 198. juſtly calls them, the authors of our exiſtence next to God: And this perfection alone ought to incite us to dutifulneſs and reverence to our parents. Epictet. Enchirid. c. 37. ſays, "But he is a bad father. Have you then no union by nature but with a good father? No ſure, the union is with a father, as ſuch. Do therefore your duty to him, and do not conſider what he does, but how your own conduct will be agreeable to nature."

Sect. LXVIII.

As likewiſe filial fear.

Since parents have power or right to direct their childrens actions, and to curb and correct them, (§ 55), the conſequence is, that parents ought not only to be loved and revered, but feared. From this mixture of love and fear ariſes filial fear (l. 1. § 131) *; and therefore we cannot chooſe but conclude from hence, that good children will only have this filial fear of their parents; and thus they will not be ſo much afraid of the pain, the caſtigation and reprehenſion of their parents will give themſelves, as of provoking their parents indignation againſt them by their vices.

Sect. LXIX.

As alſo obedience.

But becauſe obedience is likewiſe due to parents, (§ 66), children cannot eſcape reproof and chaſtiſement, if they do not readily and cheerfully obey their parents commands; and that the moroſity and ſeverity of parents does not authorize children to withdraw their obedience. Yet, becauſe right reaſon teaches us, that the greater the perfection and excellence of a being is, the greater veneration and obedience is due to that being (l. 1. § 87) *, the conſequence is, that if parents command any thing that is baſe and immoral, or contrary to the divine will, and to the laws of the country, more regard is to be had to the divine will and the laws, than to the commands of parents *.

* What is ſaid of the commands of magiſtrates by the apoſtles St. Peter and St. John (" Whether it is more juſt to obey God or you, do you yourſelves judge, Acts iv. 19." " Is it better to obey God or men, Acts v. 29.) may be applied to the precepts of parents. For tho' their authority be ſacred, yet that of God is more ſuch: Nor does the paternal authority extend ſo far as to free their children from the laws of the ſupreme magiſtrate (§ 23). Hierocles, in his commentary upon the golden verſes of Pythagoras reaſons thus: " If any order of parents be repugnant to the divine will, what elſe ought they to do to whom ſuch a colliſion of laws happens, but to follow the ſame rule that ought to be obſerved in other caſes, where there is a competition of duties? Two honeſt goods or pleaſures being propoſed, which cannot be both enjoyed, the greater ought to be preferred to the leſſer. Thus, *e. g.* it is certainly duty to obey God; but it is alſo duty to obey our parents. If therefore both obligations concur and

draw you the ſame way, it is a double and unexpected gain, and without controverſy the greateſt good. But if the divine law draw one way, and the will of parents another, in this diſagreement of laws, it is beſt to follow the better will, and to neglect the will and command of parents in theſe caſes, in which parents themſelves do not obey God."

Sect. LXX.

How parental power is diſſolved.

Moreover, ſince the neceſſity of the parents right to direct childrens actions is the ſole genuine foundation of parental power (§ 52), none can queſtion but that end being gained, the means muſt ceaſe; and therefore the parental power does not continue till death, but expires then, when male-children are come to ſuch maturity of years and judgment, that they are capable of directing themſelves, and can make a new family, or when daughters and grand-daughters marry, and go out of their father's or grandfather's houſe into other families; ſo that the law of nature does not approve that rigour of the old Roman law, which placed children, with their wives and children, under the father's power, till fathers or grand-fathers, of their own free accord, emancipated and diſmiſſed them *.

* This flows from the paternal power, or the dominium juris Quiritium peculiar to the Romans. For time did not put an end to this dominion; nor could any one loſe it without ſome deed of his own. Hence thoſe imaginary ſellings made uſe of in emancipations. For nothing appeared more conſiſtent than that (res mancipi) things in full poſſeſſion and dominion ſhould be alienated by ſelling. See A. Corn. van Bynkerſhoek de jure occid. lib. cap. I. p. 145. But this dominion over children, as *res mancipi*, being unknown to the law of nature (§ 54), this rigour we have above deſcribed, cannot belong to it.

Sect. LXXI.

Parental power being diſſolved, love ought not to ceaſe.

But when the parental power is diſſolved (§ 70), that love which nature hath implanted in the breaſts of parents towards their children ought not to ceaſe. And therefore it is the duty of parents to delight in the welfare and happineſs of their children, even after they are ſeparated from them, and out of their family; to aſſiſt them with their counſel and their wealth to the utmoſt of their power, and to be no leſs beneficent to them than to thoſe which are ſtill in their family; and, in fine, to do all they can to promote their happineſs: Whence it is alſo evident, why emancipated children ought to ſucceed to inteſtate parents as well as thoſe who are not *.

Whether it be in the power of the parents and children to diſſolve the parental power at their pleaſure.

Sect. LXXII.

Hence we alſo conclude, that it is not in the power of parents, at their will and pleaſure, to diſmiſs children, of whatever age, from their family, nor to retain adult children under their power ſo long as they pleaſe; but yet, that children are not excuſable in deſerting parents againſt their will

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* Wherefore, in this matter, many nations ſeem to have departed from natural equity, in which married daughters, having got a certain patrimony by way of dowry, were obliged to content themſelves with it, and were excluded from any farther ſhare or ſucceſſion to the paternal inheritance. This law was amongſt the Hebrews founded on a very ſolid reaſon, becauſe ſuch was the frame of that republic, that every tribe had its lot, which could not paſs to any other tribe, Num. xxvii. But the Syrian cuſtom, of which we ſee an inſtance, Gen. xxxi. 14. & ſeq. was not equally commendable. See a curious diſſertation by Jacob Perizonius, de lege voconia, p. 119. where there are ſeveral learned obſervations on this ſubject. Much leſs ſtill can we approve of the Roman law, which excluded emancipated ſons from ſucceſſion to the paternal inheritance, ſince the Prætor had a power to ſoften the rigour of it, and ſince Juſtinian entirely abrogated it, Novella 1. 118. For emancipation ought only to diſſolve parental power, and not parental love, from which we have ſhewn that ſucceſſion to inteſtates ought to be derived (l. 1. § 295).

will, and in refuſing to ſubmit to their authority. For as it is unjuſt in parents to omit any thing without which the end of this ſociety cannot be attained (§ 24); ſo children cannot, without injuſtice, ſhake off their parents authority; becauſe what one would not have done to himſelf, he ought not to do to others (l. 1. § 88).

Sect. LXXIII.

The obligations of children to parents after parental power is diſſolved.

As the love of parents ought not to be extinguiſhed when parental power is diſſolved (§ 71), ſo that love of veneration which children owe to their parents ought much leſs to ceaſe with parental power; yea, ſince every one is bound to love his benefactor (which love is called *gratitude* (§ 226); the conſequence is, that children, after the parental power no longer takes place, are obliged to teſtify gratitude towards their parents every way; not merely by words, but to repay benefits by benefits; and therefore to undertake nothing of any moment, or that regards the honour of the family, (ſuch as marriage) without their conſent; nay, to ſupply them with the neceſſaries and conveniencies of life, if they want them. This kind of gratitude, tho' it belongs to the duties of imperfect obligation, yet it is of ſuch a peculiar nature, that civil laws may reduce children, unmindful of their filial duties, into good order * (l. 1. § 227).

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* If what is told of the ſtorks be true, that they provide for their aged parents, thoſe brute creatures reproach children who neglect their duty to parents. "The ſtorks (ſays Ælian. Hiſt. animal. 3. 23.) take tender care of their aged infirm parents: tho' they be commanded to do this by no laws, yet they are led to it by the goodneſs of their nature." But ſhall not reaſon perſuade men to what nature excites the very brutes?

Sect. LXXIV.

The mutual obligation of tutors and pupils.

If parents die before children have arrived at a proper age to conduct themſelves, the nature of the thing requires that their education ſhould be committed to others, who are called *tutors* or *guardians*; and therefore guardianſhip is nothing elſe, but the power of directing the actions of children, and of managing their affairs and intereſts in room of their parents, till the children are come to ſuch maturity of years and judgment, as to be fit to govern themſelves * (§ 54). From which definition we may infer, that tutors have the ſame power with parents, if it be not circumſcribed by the civil laws within narrower bounds; and are obliged to the ſame fidelity, and all the ſame duties as parents; and, in fine, that pupils or wards are no leſs obliged to veneration, gratitude and obedience, than children; and that this obligation is ſo much the more ſtrict, that the benefit done them is greater, when performed not in conſequence of any natural tie, but from pure benevolence.

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* How long children are to be held minors, the law of nature cannot determine, ſo different are the capacities, genius's and diſpoſitions of children, ſome becoming very early wiſe, and others continuing very long fools. But, becauſe legiſlators in ſuch caſes attend to what ordinarily happens (§ 44), they have done well to fix a certain period to minority. But how various their determinations have been in this matter, is ſhewn by teſtimonies collected from the moſt ancient hiſtories, in a diſſertation of Jo. Petrus a Ludewig, de ætate legitima puberum & majorennium.

CHAP.

CHAP. IV.

Concerning the duties belonging to maſters and ſervants, and that deſpotical ſociety.

Sect. LXXV.

Wherein the deſpotical ſociety conſiſts, and its origine.

WE now proceed to conſider the *ſociety of maſter and ſervants*, which is not, by nature, ſo neceſſary as the more ſimple ſocieties of which we have already treated, but yet has been moſt frequent among mankind from the moſt antient times. And by it we underſtand a ſociety between a maſter or miſtreſs, and men or women-ſervants, in which the latter bind themſelves to promote their maſter's intereſt by their work and labour, and the former bind themſelves to maintain them; nay, ſometimes to pay them a certain hire or wages. For ſince ſuch is the condition of mankind, that one ſtands in need of another's work; and there is no reaſon why one may not procure to himſelf what he wants by another's help (l. 1. § 325); the conſequence of which is, that we may ſtipulate to ourſelves the help or work of others by an interveening contract, and thus form between us and ſervants a deſpotic ſociety, which is evidently, in its nature, unequal and rectoreal (§ 18).

Sect. LXXVI.

What is a maſter or a miſtreſs, and what a man or woman-ſervant?

By *maſter* or *miſtreſs* we therefore underſtand a perſon who employs others to promote his intereſt, and obliges himſelf to maintain them, or over and above to pay them certain wages. *Servants* are perſons who bind themſelves to promote their maſters intereſt by their labour, either for their maintenance only, or for wages, together with maintenance. Now, from theſe definitions it is manifeſt, that ſervitude of the latter kind is mercenary, and its foundation is none other than *a contract of letting and hiring*; the former is perfect ſervitude, and may be called *obnoxia*, *property* *; and its foundation is dominion over the perſons of ſervants acquired by a juſt title.

* I uſe the word uſed by Phædrus Fab. l. 3. præf. v. 34.

Servitus obnoxia,
Quia, quæ volebat, non audebat dicere,
Adfectus proprios in fabellas tranſtulit.

The Greeks diſtinguiſhed between ſervants, which were property, whom they called δȣ́λȣς, and domeſtic or hired ſervants, whom they called οικέτας, according to Athenæus Deipnoſ. 6. 19. Both kinds of ſervitude are very ancient. It is plain from Geneſis, xi. 5. xiv. 14. xv. 3. 4. xvi. 1. & ſeq. that Abraham had many ſervants, *obnoxii*, or perfect ſervants, in the fourth age from the deluge. So that Jacob ſerved Laban as a mercenary ſervant for many years, is well known from Geneſ. xxix. 15. xxx. 28. Nay, Noah makes mention of perfect ſervitude, Gen. ix. 25. And he condemns Chanaan to it for injuries he had done to him. But Jo. Clericus Comment. in Geneſ. p. 72. has juſtly obſerved, that this was rather a prediction of what was to happen a little after.

Sect. LXXVII.

Some give themſelves up to perfect ſervitude on account of their dullneſs and incapacity.

That mercenary ſervitude is not contrary to the law of nature none can doubt; but neither is the other ſervitude, ſince experience teaches us, that ſome men are naturally of ſo ſervile minds, that they are not capable to govern themſelves or a family, nor to provide for themſelves the neceſſaries of life *. But ſince every one ought to chooſe the kind of life he is fitted for, (l. 1. § 147), and ſuch perſons are fit for no other kind of life, but to ſerve others for their maintenance, they certainly do nothing contrary to their duty, if they give themſelves up perpetually to others on that condition.

* This was obſerved by Ariſtotle, who ſays, that ſome men are φύσει δȣ́λȣς, ſervants by nature, Polit. 1. 3. For

tho' Pufendorff of the law of nature, &c. 3. 28. & 6. 3. 2. had reaſon to refute this philoſopher, if his meaning were, that perſons by their prudence, had a perfect right of enſlaving, without any other cauſe, thoſe who are ſtupid, as the Greeks arrogated a right to themſelves over the nations they called barbarous; yet there is no abſurdity in this ſaying, if it be underſtood of a ſervile diſpoſition, and of a natural condition, as Dan. Heinſius thinks it ought to be, epiſt. ad Ge. Richterum, apud Jan. Rutgerſ. var. lect. 4. 3. In this ſenſe Ageſilaus ſays, in Plutarch, apophtheg. Lacon. p. 190. that the Aſiatics were bad freemen, but excellent ſlaves.

Sect. LXXVIII.

Some thro' extreme poverty.

Beſides, extreme poverty, and other private or public calamities, may induce ſome, who are not ſtupid, to become ſervants rather than periſh. For ſince man is obliged to preſerve his life, and to avoid death and deſtruction (l. 1. § 143), and of two imminent evils, the leaſt ought to be choſen; it follows, that he whom providence hath placed in this ſituation, is not to be blamed, if, there being no other honeſt way of avoiding death, he give himſelf up in ſervitude *.

* Thus the Egyptians gave themſelves up to their king as ſervants, that they might not periſh by famine, and held it for a favour that Pharaoh would accept of their ſervice for their living or maintenance. Hence, having accepted of the condition of ſervitude, they anſwered Joſeph, Gen. xlvii. 25. "Thou haſt given us our lives, let us find favour in thy ſight, and let us be ſervants to Pharaoh." Thus Pauſanias tells us, l. 7. c. 5. "That the Thracian women, tho' freeborn, earned their bread among the Erythræi, by voluntary ſervitude; not now to mention the Friſians, of whom Tacitus, Annal. 4. 72. nor the Gauls, of whom Julius Cæſar de bello Gallic. 6. 13.

Sect. LXXIX.

Some conquered in war accept of this condition.

Again, the fury of war much augmented the number of ſervants. For becauſe all things are lawful to an enemy againſt an enemy, it is lawful to kill a ſubdued enemy (l. 1. § 183). But becauſe he who can deliver himſelf from danger without hurting his aggreſſor, or by a leſſer evil, ought not raſhly to proceed to killing (ibid. § 181), it is certainly not unjuſt for a conqueror to ſave the vanquiſhed, and lead them captives, that they may no longer have it in their power to hurt him; and to make ſervants of them, that he may not have the burden of maintaining them gratis; nor can they be blamed who chooſe to ſave their lives on theſe terms, rather than periſh *.

* Therefore, this ſociety ariſes really from conſent, tho' not voluntary, but extorted by juſt force (§ 15). For the conqueror is willing to ſave the conquered, but upon this condition that they become his ſervants; the conquered is willing to ſerve, that he may be ſaved. For if he would rather periſh, what hindered him from ruſhing upon the conqueror's arms. Now the concurrence of two wills is conſent (l. 1. § 381.) Wherefore, ſociety between a maſter, and ſervants taken in war, ariſes from conſent.

Sect. LXXX.

Some are born ſervants.

But theſe kinds of perfect ſervitude cannot but produce the effect which one is detruded into by the very fortune of birth. For ſince the foundation of perfect ſervitude is dominion acquired by a juſt title (§ 76), and all thoſe we have already mentioned are juſt titles (§ 76 & ſeq.) the conſequence is, that all theſe ſervants are under the juſt dominion of their maſters. But ſince out of lawful matrimony (which can hardly take place among ſome of thoſe ſorts of ſervants *) the offſpring goes along with the mother (l. 1. § 252) it is no wonder that the offſpring of ſuch women-ſervants undergo the ſame condition with the mother, as an acceſſion to her; and therefore thoſe kinds of ſervants are known to all nations, which were called by the Romans *vernæ*.

* Matrimony is a ſimple ſociety between perſons of different ſexes, formed for the ſake of procreation and education (§ 27). Thoſe therefore who enter into this ſtate, ought to have it in their power to conſent to this end, and to chooſe it, and the means neceſſary to obtaining it. But the principal end, *viz.* convenient education, is not always in the power of perfect ſervants, but it depends wholly on the will of their maſter. Therefore, among ſome ſuch men and women ſervants, there is no place for lawful matrimony. We ſay it cannot take place among ſome ſuch, as thoſe namely whom fortune has reduced to this condition, that their maſters, after the manner of the Romans might, deſcriptis per familiam miniſteriis uti. But when every one has his fixed ſeat and abode, as among the Germans, (Tacit. de morib. Germ. c. 25.) there marriage among ſervants may more eaſily take place, as experience ſhews us. But tho' the proper ſlaves of the Germans have the *jus connubii*, liberty of marriage, yet this rule has force among them, that the birth follows the bearer, and is of the ſame condition with the parents, except where alternate ſharing is eſtabliſhed (l. 1. § 252).

Sect. LXXXI.

The power of a maſter over a mercenary ſervant.

Theſe principles being fixed, it is eaſy to find out the duties of maſters and ſervants in this ſociety, and what power maſters have over their ſervants. For as to mercenary ſervants, ſince they are only bound by a contract of letting and hiring, (§ 76) the maſter has no other power over them, than to appoint the work to them for which they bind themſelves, and to make profit by their work, and to force them to ſerve during the time for which they engaged: He has no right to exact any other work or ſervice from them, but that for which they bind themſelves; and much leſs to chaſtiſe them with great ſeverity; tho', if the ſervant do not fulfil his contract, the maſter may not only mulct him of a part of his wages, but turn him away from him as incorrigible (§ 21).

Sect. LXXXII.

The mutual duties of this maſter and ſervant.

As therefore it is the maſter's duty to fulfil his contract, and not to exact other ſervice than was contracted for from his ſervant, and to maintain him as perſons of that condition ought to be, and to pay him his promiſed wages *; ſo the ſervant is bound to reverence and obedience to his maſter as his ſuperior; to perform his contracted ſervice to him as his hirer, and to promote his intereſt with all fidelity as his partner.

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* But neither wages nor maintenance are due, if a ſervant, by his own fault, or by chance, is not able to perform the ſervice he engaged to do (l. 1. § 361). And therefore, tho' the humanity of thoſe maſters be very commendable, who maintain a ſervant while he is ſick, yet what humanity enjoins cannot be exacted by perfect right. On the other hand, it is moſt iniquitous in a maſter to deny a ſervant who has done his work, the wages due to him, or to change his wages at his pleaſure, contrary to the terms of their contract, as Jacob complained that Laban had done ten times, Gen. xxxi. 7. This conduct of Laban was ſo diſpleaſing to God, that he took all his wealth from him, and transferred it to Jacob, Gen. ibid. 9.

Sect. LXXXIII.

The power of a maſter over a perfect ſervant with reſpect to the diſpoſal of him.

Perfect ſervants, we have ſaid, are in dominion, (§ 76). But ſince he who hath the dominion of any thing, hath the free diſpoſal of it (l. 1. § 306); the conſequence is, that a maſter may impoſe upon ſuch a ſervant any work he is capable of; make all profit by him; claim him and his children as his property, and ſell or alienate him and them upon any terms, unleſs the ſervant, who voluntarily delivered himſelf into ſervitude, made this condition, that he ſhould not go out of the family, or be alienated to any other maſter. As to the power of life and death, none will deny that it belongs to ſuch maſters (l. 1. § 308) unleſs either convention or law forbid it. Much leſs then can it be denied, that ſuch maſters have a power to coerce and chaſtiſe ſuch ſervants according to the exigence of the caſe, provided the maſter ſtill bear in mind that his ſervant is a man, and by nature his equal * *(*l. 1. § 177*)*.

* For tho' a ſervant may happen to be more perfect than his maſter, yet it cannot be denied that the maſter is his ſervant's ſuperior : And this diverſity of perfections and ſtates, does not alter the eſſence of man ; ſo that a ſervant is ſtill equally with his maſter, a man (l. 1. 177). That maxim of the civilians is therefore far from being humane, " That no injury can be done to a ſervant or ſlave," l. 15. § 35. D. de injur. And that ſaying of a miſtreſs in Juvenal is moſt inhumane. Sat. 6. v. 223.

O demens, ita ſervus homo eſt ? Nil fecerit : eſto
Sic volo, ſic jubeo, ſtet pro ratione voluntas.

He is therefore no leſs excuſable who hurts a ſervant, than he who hurts a free-man.

Sect. LXXXIV.

With reſpect to poſſeſſion and vindication.

Since to a maſter belongs the poſſeſſion of his own, and the right of reclaiming it from every perſon *(*l. 1. § 306*)* hence it follows, that a maſter may defend himſelf in the poſſeſſion of his maid or woman-ſervant by any means, and reclaim his ſervants, whether they deſert, or whether they are unjuſtly carried off, from any one whomſoever, with the fruits or profits, and acceſſions of the poſſeſſion ; and, in the firſt caſe, to puniſh the renegade according to his deſert, and to take proper and effectual meaſures to prevent his taking the ſame courſe for the future * ; unleſs this effect of the maſter's dominion be reſtricted by the civil laws (l. 1. § 317).

* Hence home-ſhackles, priſons, houſes of correction, and other methods which neceſſity obliged to, or the cruelty of maſters, allowing themſelves all corporal power over their ſlaves, invented. For tho' here regard ought to be had to humanity and benevolence (§ 83), yet the coer-

cive power ought not to be taken from maſters, eſpecially over ſervants taken in war, partly becauſe ſuch are upon the catch to find an opportunity of flying and returning to their own country (which is not ſo very blameable, as Lorarius in Plautus obſerves, Plaut. Captiv. 2. 1. v. 14.

> Lo. *At fugam fingitis. Sentio, quam rem agitis.*
> Cap. *Nos fugiamus? quo fugiamus?* Lo. *in patriam.*
> Cap. *apage! haud nos id deceat,*
> *Fugitivos imitari.* Lo. *Immo, ædepol, ſi erit occaſio, non dehortor.*)

partly becauſe they ſtill preſerve a hoſtile diſpoſition, inſomuch, that what Seneca ſays is particularly true of ſuch ſervants, Ep. 47. So likewiſe Feſtus in voce: quot ſervi. "Totidem quemque domi hoſtes habere, quot ſervos." So many ſlaves at home, ſo many enemies at home.

Sect. LXXXV.

The duties of maſters to ſuch ſervants.

It will not now be difficult to aſcertain the mutual duties of maſters and ſuch ſervants. For becauſe an *obnoxious* or perfect ſervant is in dominion, (§ 76) and therefore a maſter may make all the gain he can of ſuch (§ 83), ſo that ſuch a ſervant hath nothing in property; the conſequence is, that the maſter is obliged to maintain ſuch a ſervant, and this obligation does not ceaſe, then eſpecially, when he is not able to perform his ſervice *. And ſince a ſervant is, with regard to nature, equal to his maſter (§ 83) it is obvious, that the maſter is culpable if he injuriouſly hurts his ſervant; and he is worthy of commendation, if he endeavours to reform a diſobedient ſervant by benefits rather than by cruel methods.

* A mercenary ſervant, beſides his maintenance, receives wages (§ 82), ſo that he has ſomething wherewithall to ſuſtain himſelf, if he be diſabled by ſickneſs or accident from performing his work; wherefore, ſince the maſter is obliged to maintain ſuch a ſervant only by the contract of hiring (§ 76), he is not perfectly bound to the alimenting of ſuch a ſervant, who is not able to ſerve (§ 82). But with reſpect to a perfect ſervant or ſlave, the caſe is

different: For he is not maintained for his work, but as being under his maſter's dominion, and having no wages, he has nothing belonging to him. Beſides, charity and humanity oblige us to aſſiſt even ſtrangers and enemies (l. 1. § 219); and therefore, with what face can we deny ſuſtenance to a ſick ſlave, who has worn himſelf out in our ſervice? Hence the Emperor Claudian gave their liberty to ſlaves, who were expoſed in their ſickneſs by their cruel maſters, Sueton. in Claud. c. 25. l. 2. D. qui ſine manum.

Sect. LXXXVI.

The duties of ſervants to their maſters.

Becauſe as many different kinds as there are of ſervitude, ſo many duties of ſervants there are, as correlates to the ſeveral rights of maſters (l. 1. § 7) hence it follows, that perfect ſervitude obliges a ſlave to every ſort of work or ſervice, to promote his maſter's intereſt to the utmoſt of his power, and to bear chaſtiſement and correction, and the diſpoſal of him and his at his maſter's will, with patience. That he acts contrary to his duty, if he deſerts his maſter, or defrauds his maſter, by ſtealing, as it were, himſelf away from him; and that he ought rather to endeavour to merit his liberty and manumiſſion by faithful and cordial ſervice, thus rendering himſelf worthy of ſo great a benefit.

Sect. LXXXVII.

How ſervitude is diſſolved.

From what hath been ſaid, we may eaſily underſtand how this ſociety is diſſolved. Mercenary ſervitude, depending upon a contract of letting and hiring, is diſſolved in the ſame manner ſuch contracts are diſſolved, and more eſpecially by the expiration of the time contracted for. Perfect ſervitude is principally diſſolved by manumiſſion. For ſince any one may derelinquiſh or abdicate his own l. 1. § 309), there is no doubt but a maſter may renounce his right to a ſervant, which renunciation was called by the antients *manumiſſion*. Beſides, renunciation being a kind of alienation, and ſeeing in alienation one may except or reſerve what he pleaſes (l. 1. § 278) it is plain that manumiſſion may likewiſe be granted upon any honeſt conditions whatſoever *.

* Thus the old Romans at manumiſſion ſtipulated to themſelves certain handicraft-works, preſents or gifts, l. 3. pr. l. 5. l. 7. § 3. D. de oper. libert. And our anceſtors, when they manumitted their ſlaves, reſerved a right to themſelves to exact from them ſuch ſervices as their mercenary ſervants, or even ſlaves were wont to perform to them; ſo that abſtracting from the title and condition of the ſervitude, there was hardly any difference between ſlaves and libertines among them. And hence Tacitus de moribus Germ. ſays, " That their freed-men were not in a much more preferable ſtate than their ſlaves."

Sect. LXXXVIII.

What a freed man is, and what are his duties.

Thoſe ſlaves who are manumitted by their maſters are called *libertini*, and the *liberti* of the manumittor. Now, ſince maſters, who give liberty to their ſlaves, confer upon them the greateſt benefit they can beſtow; and every one is obliged to love him who beſtows favours upon him (l. 1. § 226); ſlaves ſet at liberty *(liberti)* are the moſt ungrateful of mortals, unleſs they love the patrons who conferred ſo great a bleſſing upon them, and they are obliged to pay the higheſt veneration to them, and not only to perform to them cheerfully all that their maſters ſtipulated to themſelves upon giving them their liberty (§ 87) but likewiſe to be ready to render to them all other good offices in their power; or, if the power of ſerving them be wanting, at leaſt to ſhew gratitude towards them in every manner they can * (l. 1. § 228).

* The ancients looked upon giving liberty to ſlaves as the greateſt of benefits. Simo in Terence ſays, And. l. 1. v. 10.

Feci, e ſervo ut eſſes libertus mihi,
Propterea, quod ſerviebas liberaliter :
Quod habui, ſummum pretium perſolvi tibi.

For the Patron, by giving his liberty to a ſlave made him a *perſon :* and therefore, he was to the freed-man in the room of a father, who on that account aſſumed his patron's name, as if he were his ſon, Lactant. divin. Inſt. 4. 3. Hence he was no leſs obliged than a ſon to provide an aliment for his patron, if he happened to be in want, l. 5. § 18. l. 9. D. de agnoſc. & alend. lib. And as a ſon, tho' the obligation to gratitude be otherwiſe imperfect, was forced to repay the benefits received from his father, and to maintain him ; ſo the freed-ſlave was forced to do the ſame, and could be reduced into ſlavery again for pregnant ingratitude, Inſt. § 1. de cap. diminut. l. un. C. de ingrat. lib.

CHAP. V.

Of the complex ſociety called a family, *and the duties to be obſerved in it.*

Sect. LXXXIX.

What a family is.

WE obſerved that leſſer or more ſimple ſocieties may coaleſce or unite into larger and more *compounded* ones (§ 17) : and of this the ſocieties we have deſcribed afford us an example. For when theſe join and conſent into a larger ſociety, hence ariſes *a family*, which is a ſociety compounded of the conjugal, the paternal and deſpotic ſociety *. Whence the huſband and wife, parents, maſters and miſtreſſes, with reſpect to this ſociety, are called *fathers* and *mothers*, or *heads of a family* ; the children are called *ſons and daughters of the family*, and the men or women-ſervants are called *domeſtics*.

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* Ulpian's definition comes to the ſame purpoſe, l. 195. § 2. D. de verb. ſignif. " We call *a family*, with its proper rights, as ſuch, many perſons ſubjected to one

head, either by nature or by law, (ut puta patremfamilias, matremfamilias, filiumfamilias, filiamfamilias), and thoſe who ſucceed into their room, as grandſons and granddaughters, *&c.* But we take the term in a ſomewhat larger acceptation. For, whereas he only comprehends husband and wife, parents and children, we comprehend ſervants as a part of a family; as he himſelf a little afterwards calls them, § 3. "ſervitium quoque ſolemus vocare *familiam*," we alſo reckon ſervants a part of the family." Beſides, among the ancients *family* ſignified the ſervants, "quaſi familia," as Claud. Salmaſ. exercit. Plin. p. 1263. has ſhewn. And the parents and children were called by them *domus*, the houſe, as in Apuleius Apolog. p. 336. "ipſe *domi* tuæ rector, ipſe *familiæ* dominus. We ſhall therefore uſe the word *family*, to denote what the ancients called *domus* and *familia*.

Sect. XC.

To whom the direction or government belongs in this ſociety.

But becauſe the larger a ſociety is, the leſs practicable is it that ſo many members ſhould find out neceſſary means for attaining the end of the ſociety by common conſent and ſuffrage (§ 18) it is evident that this ſociety muſt be unequal and rectoreal; and therefore that the power of directing the reſt to the end of the ſociety, muſt be transferred to one of the members. Now, ſince the huſband and father of the family has a certain authority or prerogative over the wife (44) and his command, as father, ought to prevail over the mother's when they diſagree (§ 53); and ſince he hath, as maſter, undoubted power over his ſervants of whatever ſort; (§ 81 and 83) the power of directing the actions of the whole family muſt belong to the *father* *; but in ſuch a manner however, that the mother is obliged, as ſharer of his good or bad fortune, to give him all the aſſiſtance ſhe can of every kind (§ 42).

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* But this is to be underſtood of what ordinarily or regularly happens. For that it is ſometimes otherwiſe, we have already ſhown (§ 46). Who will deny that a queen

who marries a ſtranger is ſtill head of her family, and that in this caſe, no other part belongs to the husband but what regularly belongs to the wife, *viz.* to give all manner of aſſiſtance to his queen-wife? We have very recent examples of this.

Sect. XCI.

The end of this ſociety in a ſtate of nature, and in a civil ſtate.

Now, ſuch a family is either in a ſtate of nature, ſubject to none, or it is united with other families into one ſtate. In the firſt caſe, the end of this ſociety is not only to acquire the things neceſſary to its happy ſubſiſtence, but likewiſe to defend itſelf againſt all invaders or enemies; and therefore they judge right, who conſider ſuch a family as a ſpecies of the leſſer ſtates or republics *. In the latter caſe, becauſe every family is protected againſt the injuries of their fellow citizens or ſubjects by judges, and againſt common enemies, by the common ſtrength of the republic, its end can be no other but the acquiſition of things neceſſary to its more comfortable and happy ſubſiſtence.

* Thus Ariſtotle conſiders it, Polit. 3. 6. where he ſays, that ſegregate heads of families, living by themſelves, are with their families as ſtates, and defend themſelves by the members of their families againſt all injurious invaders. Nor does Hobbes philoſophize about the manner differently. Leviath. c. 20. Tho' properly indeed ſuch a family be not a ſtate, as Ariſtotle acknowledges a little after, where he ſays, "Yet if we accurately conſider the matter, it is not properly a city or ſtate;" yet it is very like to one, and when it grows up into a great multitude of perſons, it becomes a ſtate or republic, as Plato obſerves in politic. t. 2. op. edit. Serrani.

Sect. XCII.

The power of the head or father in a ſtate of nature.

But ſince the end of this domeſtic ſociety, in a ſtate of nature, is not only to acquire the neceſſaries to convenient and comfortable living, but likewiſe to defend itſelf againſt injuries (§ 91) the conſequence is, that the father of the family has all the rights neceſſary to attain to theſe ends; and therefore he may not only manage the family eſtate and intereſt as ſeems beſt to him, and allot to every one in the family his care and taſk, and call every one to an account for his management; but he has likewiſe all the rights of a prince or ſupreme magiſtrate in his family, and conſequently can make laws, puniſh delinquents, make war and peace, and enter into treaties *.

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* We have examples of this in the patriarchs Abraham, Iſaac, and Jacob, who, as princes, or heads of ſegregate families, exerciſed all the rights of ſovereignty. Thus Abraham, when he heard his brother Lot was taken captive, armed his trained ſervants born in his own houſe, and joined with certain confederates, and made war againſt the enemy, Gen. xiv. 14. The ſame Abraham entred into an alliance with Abimelech, Gen. xxi. 22. which was afterwards renewed by Iſaac, Gen. xxvi. 26. Jacob in like manner made a covenant with Laban, Gen. xxxi. 44. and his family made war (tho' an unjuſt one) againſt Hamor and his ſon Shechem, Gen. xxxiv. 25. Jacob likewiſe gave a law to his houſhold about putting away ſtrange gods from among them, Gen. xxxv. 2. Judah, his ſon, condemned his daughter-in-law to be burnt, Gen. xxxviii. 24, 25. Of theſe facts Nicolaus Damaſcenus was not ignorant. Excerpt. Peireſc. p. 490. See likewiſe Juſtin. 36. 2.

Sect. XCIII.

In a civil ſtate.

On the other hand, ſince the end of a family, coalited with other families into the ſame ſtate, can be no other but the acquiſition of neceſſaries and conveniencies (§ 91), it is very plain that ſuch eminent rights do not belong to the heads of ſuch families, but thoſe only which we deſcribed (§ 92), without which the family cannot have a comfortable ſubſiſtence; and in this caſe the mother has ſome ſhare; whereas the modeſty and character of her ſex does not permit her to partake of thoſe rights which belong to the father of a family, as the ſupreme magiſtrate of the family.

Sect. XCIV.

Simple ſocieties ought not to be an impediment to this more complex ſociety.

Moreover, ſince in more complex ſocieties the intereſt of the more ſimple or leſſer ought not to be oppoſed to that of the larger (§ 23), it is plain, that the conjugal, the paternal, the domeſtic ſocieties ought not to be an obſtacle to the end and intereſt of the whole united family *; and hence ariſe certain duties peculiar to this complex ſociety, ſome of which belong to the father and mother with regard to one another; others to both, with reſpect to the other members of the family; others to the members of this family, with reſpect to the father and mother of the family; and others, in fine, to the members with relation one to another. See Wolfius de vita ſociali hominum, § 194.

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* Becauſe, in this caſe, one and the ſame perſon ſuſtains ſeveral different perſonages or characters, he is under ſo many reſpective obligations, and has ſo many reſpective rights correſpondent to, and depending upon theſe different characters and relations of husband, father, and head of the family.

Sect. XCV.

The mutual duties of the father and mother of the family towards one another, and their duties to the family.

Since the father hath the principal part or character in this ſociety (§ 90); but ſo, that the mother is obliged to give him all poſſible aſſiſtance in every way (ibid.); it follows, that it belongs to the father of the family to command what he would have done, to maintain the whole family, and each member, as every one's condition requires, to coerce and puniſh thoſe who do any injury or diſhonour to the family, ſuitably to what the rights of a more ſimple ſociety permit, and to ſupport the dignity and authority of the mother; and it is her duty to uſe her utmoſt care that the children and ſervants obey their orders *; to act in the huſband's room in his abſence; and, in fine, to ſhew an example to the whole family of veneration and obedience, being ſure to have ſo much the more authority in the family, in proportion as ſhe ſtudies to maintain and augment that of her huſband.

* Socrates ſays in Xenophon. Oecon. c. 3. § 15. "I think a wife who is a good partner in a family, contributes as much to its intereſt as the husband. For very often wealth is brought by the husband's induſtry into a houſe, and the greater part of it is at the management of the wife, which, if it be good, the family is enriched; if bad, it is ruined."

Sect. XCVI.

The duties of both with regard to the ſimpler ſocieties.

Now, if the ſimpler ſocieties ought to be ſo managed, that they may not be a hindrance to the good of the whole family (§ 94), it is manifeſt that the father acts contrary to his duty, if he is an impediment to the mother in her care about the education of their children; and ſhe is much leſs excuſable, if ſhe makes the rebellious children worſe by her indulgence; and both are in the wrong, if they, by their diſcords and jarrs, are a bad example to the children, or if they are negligent of their education and behaviour. In like manner it is evident, that a domeſtic ſociety muſt be in a very bad ſtate, if the children are left to the care of the ſervants, and are allowed to converſe with them at their pleaſure; or if, on the one hand, the ſervants give ill advice to children, and induce them to, or aſſiſt them in any crime; or if, on the other hand, the children are ſuffered to treat the ſervants rudely.

* For moſt ſervants being of the very dregs of mankind, and therefore very ill educated, it is impoſſible but children muſt be corrupted by them. We ſee how juſtly they are repreſented in Plautus and Terence, as often corrupting the children by flattery, and exciting them to or aſſiſting them in very bad practices. Plutarch upon education

wiſely obſerves, "If you live with a lame perſon, you will inſenſibly learn to halt." And hence he infers, "That nothing can be more abſurd and unreaſonable than the very common practice, when one has many good ſervants, ſome fit for agriculture, ſome for navigation, ſome for merchandize, ſome for banking, others to be ſtewards, if he finds one ſlave that is idle, drunken, and unfit for every other buſineſs, to ſet him over his children." But it is evidently much the ſame in effect, whether parents commit the care of their children to worthleſs perſons, or ſuffer them to be familiar with them.

Sect. XCVII.

In a well regulated family all is in good order.

Hence it is plain, that the whole matter lies in preſerving good order in a family. But then are things ſaid to be done in order, when all things are managed and done as the circumſtances of each affair requires. And therefore in a family every one ought to have ſome buſineſs or taſk appointed to him, and to give a ſtrict account of it; and each perſon ought to be inured to do his buſineſs, not only with due care and diligence, but alſo at a convenient time, and in a proper place; and, in fine, all the furniture, and every utenſil ought to be kept neat, clean, and intire, and every thing ought to be found in the place appointed for it, or where it is proper and convenient it ſhould be placed *.

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* All this Xenophon hath delightfully explained in his golden treatiſe of œconomics, where he introduces Iſchomachus diſcourſing with his wife about the management and œconomy of a family. And cap. 8. ſhe ſums up all thus: That, as in a choir, in an army, or in a ſhip, ſo in a domeſtic ſociety, there is a firſt, a ſecond, and a laſt order, and that the perturbation of this order throws all into confuſion, and renders the largeſt ſtock of furniture uſeleſs. In the 8. chapter ſhe adds, "The diſturbance of order ſeems to be like a farmer's throwing wheat, barley, and legumes, all together in a heap; and then when he wants bread, kitchen-ſtuff, or any other thing, he muſt

have the trouble of ſeparating them, and to ſearch through the whole confuſed maſs for what he has preſent need of.

Sect. XCVIII.

The duties of the inferior members of a family.

From what hath been ſaid of the duties of the whole *family*, it is obvious, that ſince all the members expect aliment from the head, each ſuitably to his rank (§ 95) every one of them is obliged to take care of the common intereſt of the whole body, and of that part committed to his truſt in particular, to render reverence and obedience to the father and mother of the family; and, above all, to do nothing that may tend to interrupt the conjugal harmony, or to hinder the education of the children; or to bereave the head of the profits he might juſtly expect from the labour, honeſty, and diligence of his ſervants.

Remarks on this Chapter.

Our Author hath treated very diſtinctly and fully of the duties of the ſimpler ſocieties, as he very properly calls them. But becauſe it is common in arguing about government, or the civil ſtate, to which our author is now to proceed, eſpecially among the defenders of abſolute monarchy, to reaſon from the right of paternity, it will not be improper to conſider domeſtic or family dominion in its natural cauſes. This will prepare the way for the conſideration of civil government, or dominion in its natural cauſes: And it is the more neceſſary, becauſe the defenders of abſolute monarchy, in their reaſonings to prove its *jus divinum*, from the right of paternity, or the government of families, conceal, as Mr. Harrington obſerves, one part of it. " For family government, ſays that excellent author (for it is from him, of his works p. 385. upon the foundations and ſuperſtructures of all kinds of government, I am now to tranſcribe) may be as neceſſarily popular in ſome caſes, as monarchical in others. To ſhew now the nature of the monarchical family: Put the caſe a man has one thouſand pounds a year, or thereabouts, he marries a wife, has children and ſervants depending upon him (at his good will) in the diſtribution of his eſtate for their livelihood. Suppoſe then that this eſtate comes to be ſpent or loſt, where is the monarchy of this family? But if the maſter was no otherwiſe monarchical than by virtue of his eſtate, the foundation or balance of his empire conſiſted in the thouſand pounds a year. That from theſe principles there may be alſo a popular family, is apparent: For ſuppoſe ſix or ten, having each three hundred pounds a year, or ſo, ſhall agree to dwell together as one family, can any one of them pretend to be lord and maſter of the ſame, or to diſpoſe of the eſtates of all the reſt? or do they not agree together upon ſuch orders, to which they conſent equally to ſubmit? But if ſo, then certainly muſt the government of this family be a government of laws or orders, and not the government of one, or of ſome three or four of theſe men. Yet the one man in the monarchical family giving laws, and the many in the popular family doing no more, it may in this ſenſe be indifferently ſaid, That all laws are made by men; but it is plain, where the law is made by one man, then it may be unmade by one man; ſo that the man is not governed by the law, but the law by the man; which amounts to the government of the men, and not of the law: whereas the law being not to be made but by the many, no man is governed by another man, but by that only which is the common intereſt; by which means this amounts to a government of laws, and not of men. That the politicks may not be thought an unneceſſary or difficult art, if theſe principles be leſs than obvious and undeniable, even to any woman that knows houſe-keeping, I confeſs I have no more to ſay. But in caſe what has been ſaid be to all ſorts and capacities evident, *it may be referred to any one*, whether without violence, or removing of property, a popular family can be made of the monarchical, or a monarchical family of the popular. Or whether that be practicable or poſſible, in a nation upon the like balance or foundation in property, which is not in a family. A family being but a ſmaller ſociety or nation, and a nation but a greater ſociety or family. That which is uſually anſwered to this point is, That the ſix or ten thus agreeing to make one family, muſt have ſome ſteward, and to make ſuch a ſteward in a nation, is to make a king. But this is to imagine, that the ſteward of a family is not anſwerable to the maſters of it, or to them upon whoſe eſtates (and not upon his own) he defrays the whole charge: For otherwiſe, this ſtewardſhip cannot amount to dominion, but muſt come only to the true nature of magiſtracy, and indeed of annual magiſtracy, in a commonwealth; ſeeing that ſuch accounts, in the year's end at fartheſt, uſe to be calculated, and that the ſteward, body and eſtate, is anſwerable for the ſame to the proprietors or maſters; who alſo have the undoubted right of conſtituting ſuch another ſteward or ſtewards, as to them ſhall ſeem good, or of prolonging the office of the ſame.

Now, where a nation is caſt, by the unſeen ways of providence, into a diſorder of government, the duty of ſuch particularly as are elected by the people, is not ſo much to regard what has been, as to provide for the ſupreme law, or for the ſafety of the people, which conſiſts in the true art of law-giving. And the art of law-giving is of two kinds; the one (as I may ſay) falſe, and the other true. The firſt conſiſts in the reduction of the balance to arbitrary ſuperſtructures, which requires violence, as being contrary to nature; the other in erecting neceſſary ſuperſtructures, that is, ſuch as are conformable to the balance or foundation; which being purely natural, requires that all interpoſition of force be removed."

It is impoſſible to treat diſtinctly of family or of civil dominion, without conſidering it in its natural cauſes, or its natural generation. "The matter of all government is an eſtate or property. Hence, all government is founded upon an over-balance in propriety. And therefore, if one man hold the over-balance unto the whole people in propriety, his property cauſeth abſolute monarchy: if the few hold the over-balance unto the whole people in propriety, their propriety cauſeth ariſtocracy, or mixed monarchy. If the whole people be neither over-balanced by the propriety of one, nor of a few, the propriety of the people, or of the many, cauſeth democracy, or popular government: The government of one againſt the balance is tyranny; the government of a few againſt the balance is oligarchy: the government of the many (or attempt of the people to govern) againſt the balance, is rebellion or anarchy; where the balance of propriety is equal, it cauſeth a ſtate of war: To hold that government may be founded upon community, is to hold that there may be a caſtle in the air, or that what thing ſoever is as imaginable as what hath been in practice, muſt be as practicable as what hath been in practice. Hence it is true in general, that all government is in the direction of the balance." All theſe truths, however much neglected by writers upon government, are of the greateſt moment: They have the ſame relation to or connexion with theories about government, whether domeſtic or civil and national, whether conſiſting of one or many families, as the real laws of matter and motion have with theories in natural philoſophy: For they are moral facts or principles upon which alone true theories in moral philoſophy or politics can be built, as the other are the natural facts, laws or principles upon which alone true axioms in natural philoſophy can be erected. They are all fully explained by the author already cited. And hence we may ſee, "That the diviſion of a people into freemen and ſervants, is not conſtitutive, but naturally inherent in the balance. Freemen are ſuch as have wherewithal to live of themſelves, and ſervants ſuch as have not: Nor, ſeeing all government is in the direction of the balance, is it poſſible for the ſuperſtructures of any to make more freemen than are ſuch by the nature of the balance, or by their being able to live of themſelves. All that could in this matter be done, even by Moſes himſelf, is contained in this proviſo, Lev. xxv. 29. *If thy brother that dwells by thee be grown poor, and be ſold to thee, thou ſhalt not compel him to ſerve as a bond-ſervant, but as a hired ſervant, and a ſojourner ſhall he be with thee, and ſhall ſerve thee to the year of jubilee: And then ſhall he depart from thee, both he and his children with him, and ſhall return to his own family, and to the poſſeſſion of his* *fathers ſhall he return.* Yet the nature of riches being conſidered, this diviſion into freemen and ſervants, is not properly conſtitutive but natural." See Mr. Harrington's works, the art of lawgiving, p. 436, 437. Compare p. 248 I ſhall only add upon this head, that the defenders of abſolute monarchy can never draw any concluſions to ſerve their purpoſe, either from paternal government, or from the power of maſters over their ſervants. For with regard to the former, what relation can be ſtricter than that between parents and children: There cannot be ſtronger obligations to ſubjection upon any than there are upon children: This relation and obligation is not the effect of conſent, children being incapable of giving their conſent, but is the effect of the neceſſity of nature, and in a peculiar ſenſe, an authority or power of the author of nature's appointment: Yet let it be remembered, that our Author, and all writers on the laws of nature and nations allow, that the obligations of children do not contradict the powerful law of ſelf-preſervation and ſelf-defence, in caſes in which life, or any thing dearer than life, is concerned. But if this be true, how can one imagine, that when the ruin of the public happineſs, which is as it were the life of the community, is attempted, the ſame law of ſelf-defence is of no force, and ought not to be regarded? Suppoſe the right of dominion over men ſecured by an over-balance in property, and withal of divine appointment, in any conceivable ſenſe of theſe words, yet, if it be as ſacred as the right of a father, it cannot extend beyond the right of a father, which does not extend to the deſtruction of the right of ſelf-defence, or to command immoral actions without contradiction or reſiſtance: Or if it be more ſacred than the right of a father (could that greater ſacredneſs be conceived) it cannot be more ſacred than the law of nature, and the right of God to exact obedience to that law, and to forbid the tranſgreſſion of it in obedience to whatever other authority, and ſo extend to the demoliſhing of all the natural rights and duties of mankind: Power, whatever be its title, or whatever be its foundation and ſecurity, if it be exerced contrary to the laws of nature, contrary to the law of juſtice and love, it is not *right*; it is power indeed, but guilty criminal power, which it is, it muſt be a crime not to reſiſt to the utmoſt of one's power, if the law of nature, *i. e.* the law of God be immutable, univerſally and indiſpenſably obligatory upon all men.

With reſpect to the power of maſters over ſervants, or ſlaves conquered by juſt war, it is likewiſe true that ſuch a maſter is a lawful ſuperior, and hath no equal in his family, yet hath his family, his ſervants, his ſlaves a right to defend themſelves againſt him, ſhould he endeavour to ruin or murder them; and ſuch a maſter has no right to command any thing in the ſmalleſt degree contrary to the law of nature; but every one in his family hath a right, or more properly ſpeaking, is obliged to reject and reſiſt ſuch orders to the utmoſt of his power. None can have a right to injure any one in making acquiſitions of property or dominion, and none can have a right to exerciſe his acquired power, property or dominion, in an injurious way to others, tho' part of their property or dominion; becauſe tho' dominion and property be not contrary but agreeable to the law of nature, yet the more conſiderable part of the law of nature conſiſts in limitations upon the exerciſe of dominion and property, or in preſcribing duties to thoſe who have dominion and property, with regard to the uſe and exerciſe of it. And (as our Author hath often obſerved) where there is duty incumbent upon any one, there is, *ipſo facto*, a right veſted in ſome other, who is the object of that duty, to claim the fulfilment of it towards him. But we ſhall have occaſion to return to this ſubject afterwards. And it is ſufficient at preſent to have obſerved, 1. The natural cauſe or ſource of dominion. And, 2. That there are boundaries ſet by the law of nature to the acquiſition and exerciſe of dominion, which boundaries are, with reſpect to ſubjects of dominion, rights belonging to, and veſted unalienably in them, by the ſame law which ſets theſe limitations to power and dominion, and by ſetting them to it, impoſes certain indiſpenſable duties upon the poſſeſſors of power and dominion. This muſt be, if the law of nature is not an empty ſound, the ſupreme law, with regard to thoſe who have dominion, whether as fathers, maſters or kings (according to this definition of a King by Grotius, de jure belli & pacis, l. 1. c. 3. " Paterfamilias latifundia poſſidens, & neminem alia lege in ſuas terras recipiens quam ut ditioni ſuæ, qui recipiantur, ſe ſubjiciant." " A maſter of a family, who having large poſſeſſions, will not ſuffer any one to dwell in them on other terms than being ſubject to him.") *viz.* the greater good of their children, ſervants, family, or ſubjects. This being fixed as the fundamental law, particular duties are eaſily deducible from it. And this muſt be the ſupreme law, or man is ſubject to no law, but may exerce his power as he pleaſes, *i. e.* in other words, either the greater good of the whole ſociety is the law, or ſtrength is free from all law, and may do what it can, and there is no ſuch thing as unlawful exerciſe of power.

CHAP.

CHAP. VI.

Of the origine of civil ſociety, its conſtitution and qualities, or properties.

Sect. XCIX.

The civil ſtate has been agreeable to almoſt every nation.

THO', in the ſocieties we have deſcribed, men might have lived very comfortably; yet ſome reaſon hath prevailed upon men to form themſelves into thoſe larger ſocieties, which we call *ſtates* or *republics*, and to prefer, almoſt by univerſal conſent, the civil to the natural ſtate; there is almoſt no nation ſo barbarous, in which we do not find ſome ſemblance of a civil ſtate or republic.

* They atteſt the truth of this who have viſited the anciently unknown countries, northern and ſouthern, having found in moſt of them either great multitudes ſubject to one king, or determining matters of common concernment to them by common conſent. For what ſome authors have ſaid of the Cafri, and the people inhabiting mount Caucaſus, and of certain American Iſlanders, (ſee Hert. Elem. prud. civil. 1. 1. p. 45. Becmann. geograph. 9. 8.) theſe accounts ſeem to be given by perſons who had not enquired very narrowly into the matter, and who thought they ſaw no veſtige of civil government, where they ſaw no palaces and guards, nor nothing of the ſplendor and magnificence of a court. Petrus Kolbius, who lived long in that corner of Africa, ſays of the *Cafri*, that they were divided into ſeventeen provinces or nations, each of which had its own prince, whom they called *Kouqui*, and that every village had its prefect, called in their language *Kralle*, who had even the power of puniſhing criminals. As for public affairs, he adds, that all the prefects met together, and conſulted in a common-council, in which the prince of the nation preſided. I am afraid what Saluſt ſays of the Aborigines and Gætuli, Catil. cap. 6. & Jugurth. c. 18; and Strabo of the Numidians, geograph. l. 17. p. 1191. and Valerius Flaccus, Argonaut. l. 4. v. 102. of the Bebricii, Pliny of the Troglodites,

hiſt. nat. 5. 8. and in fine, Homer of the Sicilians, that all theſe accounts are equally groundleſs. The natural ſtate of the Sicilians is elegantly deſcribed by Homer Odyſſ. l. 10. v. 112.

Nec fora conciliis fervent, nec judice: tantum
Antra colunt umbroſa: altiſque in montibus ædes
Quiſque ſuos regit uxorem natoſque, nec ulli
In commune vacat ſocias extendere curas.

Sect. C.

Whether it was by indigence of neceſſaries they were engaged to chooſe a civil ſtate.

Tho' many, in their enquiries concerning the origine of a civil ſociety, have thought that men were compelled to it by the want of ſeveral neceſſaries (Plato de repub. l. 2.); yet this is the leſs probable; firſt, Becauſe we have an account of ſomething like civil ſociety in Geneſis iv. 17. when the world was not ſo populous as that there could be any want of neceſſaries. And next, becauſe nothing hinders commerce from taking place where there is no civil government (§ 10); and, in fine, becauſe there has been a much greater indigence of all things, ſince, civil government being eſtabliſhed, luxury and wantonneſs began to ſpread and reign among mankind *.

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* Thus we find Abraham, Iſaac and Jacob, who lived ſometime in a natural ſtate, (§ 92), tho' they only applied themſelves to huſbandry, and feeding of cattle, to have lived very agreeably, and to have amaſſed great wealth, and to have wanted nothing, Gen. xxiv. 35. xxxiii. 11. And indeed, ſeeing families living ſeparately and independently in very early times of the world, underſtood agriculture, and planting and dreſſing of vines, and were no ſtrangers to gold and ſilver, and the more uſeful arts (Gen. xiii. 2. xxiv. 35.) what could men deſire more, tho' they lived in a ſtate of nature, if luxury were unknown, and made none of its exorbitant demands to which nature is a ſtranger?

Sect.

Sect. CI.

If on the account of elegance and politeneſs.

Again, it can hardly be imagined that elegance and politeneſs were the motives which induced men, in the primitive times of frugality, to prefer a civil to a natural ſtate. For beſides that, what is called *elegance*, is really vanity, and what is called *politeneſs of manners*, is truly but an affected complaiſance and flattery (§ 11) *; there is nothing to hinder men, in a ſtate of nature, from improving their reaſon, and refining or poliſhing their manners. Nay, the examples of Abraham, Iſaac, and Jacob, who lived by themſelves with their ſegregate families, and had not entred into civil ſociety, ſufficiently ſhew us, that men, living in a ſtate of nature, may be quite free from all barbarity, and very decent and polite.

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* A proof of this is the mannerly polite ſpeech of Abraham to Melchiſedech, Gen. xiv. 22. and his uncommon hoſpitality to ſtrangers, Gen. xviii. 2. and his conference with the ſons of Heth, Gen. xxiii. 7. That Abraham had taught his ſervants to be moſt obſervant of decency and good manners, appears from that meſſage carried by Eleaſer to Nachor, Gen. xxiv. 22. Nor does that interview between Jacob, in his return from Meſopotamia with Eſau, ſavour in the leaſt of barbarity, in which they ſtrove to outdo one another in civil words, preſents, and other tokens of love and friendſhip. Beſides, if it be true, which Joſeph. antiq. Jud. 1. 9. ſays of Abraham, that he was skilled not only in numbers, but in aſtronomy; and what is ſaid by others of skill in the interpretation of dreams being brought to great perfection in his family (Suidas Abraham. & Juſtin. hiſt. 36), none can doubt but that the arts and ſciences may be cultivated to a great degree of perfection in a ſtate of nature, and therefore that there is no need of a civil ſtate in order to gain that end.

Sect. CII.

If for the ſecurity of juſtice.

Equally groundleſs are other reaſons for which men are imagined to have coalited into republics or civil ſtates. For as to what ſome ſay of juſtice, that civil ſociety was formed for the ſake of it, (as Heſiod. Theog. v. 87), and others of intereſt, as if it had been done on that account, (as Ariſtotle, Ethic. 8. 11.) and what others ſay, of the inſtigation of nature, (as the ſame Ariſtotle, l. 1. & 2.)—All theſe reaſons, we think, are of ſuch a nature, that they might have contributed ſomewhat towards it, but could not have been the ſole motives which determined men to commute a ſtate of liberty and equality for a ſtate of civil government and ſubjection.

* For why might not the heads of ſegregate families have made laws, and diſtributed juſtice each in his own family, (§ 92)? Again, why might not the more ſimple ſocieties have produced all the advantages of union, ſince in theſe every one was at liberty to acquire what he pleaſed, and there would be none of thoſe tributes, taxes, impoſts, upon perſons or eſtates there, which now eat up the property and eſtates of ſubjects in civil governments? Let nature be as abhorrent of ſolitude, and let a ſtate of ſolitude be as miſerable as Puſendorff hath painted it out to be, yet we can never ſay, that Abraham, for example, lived in a ſolitary ſtate, who beſides a wife and a hand-maid, and many children by both, had ſuch a numerous retinue of ſervants, that he could bring into the field three hundred and eighty ſervants born in his family, Gen. xiv. 13. However ſtrong the natural propenſion of mankind to ſociety may be, yet ſurely they were not immediately led by natural inclination to form thoſe larger ſocieties, in which there are many things very contrary to the natural diſpoſitions of mankind, as Puſendorff hath ſhewn at great length in his 7th book, cap 1. § 4. of the law of nature, *&c.* It is however very certain, that in a civil ſtate, if it be rightly conſtituted, juſtice is well adminiſtred, and all the public and private intereſts of mankind are wiſely conſulted and provided for; but thoſe things are more properly called conſequences of good civil government, than motive cauſes to the formation of it.

Sect. CIII.

The real cauſe which moved men to form large civil ſocieties was the fear of wicked profligate men.

Wherefore, when the matter is fully and accurately conſidered, they appear to have hit upon the true cauſe, who maintain that the ſtrength and violence of wicked men gave riſe to the formation of civil ſtates For all men being equal and free in a ſtate of nature (§ 5 and 6); but ſuch being the temper and diſpoſition of profligate men, that they have an inſatiable luſt of power and wealth; of robbing others of their poſſeſſions and rights, and bringing them under their yoke, it could not but happen that ſeveral heads of families, of this temper and genius, would unite their ſtrength in order to ſubject others to them. And ſince a large ſociety cannot but be unequal and rectoreal (§ 17), the conſequence is, that ſuch a band of robbers would chooſe a leader to themſelves, and preſcribe a certain form of government to him, according to which he was to rule and command them; and hence the origine of civil ſociety or political ſtates *, which are nothing elſe but a multitude of people united under a common head, upon certain conditions for their mutual ſecurity, and dependent on, or ſubjected to no other mortal.

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* This is the moſt natural account of the riſe of civil government, if we attend to reaſon and the nature of things. But ancient hiſtory ſets it beyond all doubt that it was ſo. For that is found in the ſacred writings. And theſe records aſſure us, that before the deluge, not the *ſons of God*, as they are called, Gen. vi. 1. but the *poſterity of Cain*, built the firſt city, Gen. iii. 17. For tho' we ſhould grant to the learned Jo. Clerc. comment. p. 40. that this city conſiſted but of a few little cottages, ſet about with a mound or green hedge (which is by no means certain or indiſputable) yet a ſociety of many families, without ſome form of civil government, can hardly be conceived. Moreover we are told, that after the deluge Nimrod the ſon of Chus, being mighty in poſſeſſions or territories, founded the kingdom of Babylon, *i. e.* began to oppreſs others, and

force them to ſubmit themſelves to his command, Gen. x. 8. Nor is any more ancient kingdom mentioned by Moſes, tho' the names and tranſactions of ſeveral kingdoms and dynaſties occur in the hiſtory of the time of Abraham, a few ages after. And who indeed can doubt that civil ſtates were originally formed in this manner, *i. e.* by violent oppreſſion, ſince this has ſo often happened in latter times? Hertius prud. civil. 1. 3. 4. p. 77. & ſeq. has ſhewn by inſtances brought from univerſal hiſtory, that the moſt potent kingdoms took their riſe from oppreſſion and robbery.

Sect. CIV.

This obliged the innocent to unite together in order to repel force by force.

The juſteſt heads of families could not find any other remedy againſt ſuch conſociations, but to repel force by force (§ 9). And a few not being ſufficient to accompliſh that end, neceſſity, and the malice of wicked men, forced other men to coaleſce into large bodies; the conſequence from which is, that juſt and good heads of families were obliged, through fear of violent and wicked men, to unite their forces, and joining together under a common head on certain conditions, to form a civil ſociety or political ſtate * (§ 103); whence we infer, that there would have been no republics in a ſtate of integrity. See Bocman. meditat. pol. 11. 5; and that it is trifling to obtrude upon us a ſtate of innocence as the firſt principle of the law of nature and nations (l. 1. § 74).

* They are not therefore in the wrong who aſſert that fear and force were the origine of civil ſociety, as Bodin, de rep. 1. 6. 2. 6. Hobbes de cive. 1. nor they who ſay, that men formed civil ſocieties for the ſake of enjoying their properties with ſecurity, Cic. de off. 2. 21. nor thoſe who maintain, that the imbecillity of ſegregate families, was the reaſon why men changed their natural liberty for civil government, as Grotius de jure belli & pacis, proleg. § 19. & l. 1. c. 4. § 7. For tho' all theſe opinions ſeem to differ in words, yet they come to the ſame thing in effect.

Sect. CV.

The double origine of civil ſociety.

Civil ſociety is therefore of a two-fold origine; ſome were formed to oppreſs the innocent, and for violence; others were formed to repel force by force, and for common ſelf-defence. The end of the former is moſt unjuſt; that of the latter juſt. Wherefore the former is rather *a gang of robbers* than a ſociety; the latter is *a lawful republic.* But becauſe things which have an unlawful beginning may be afterwards amended when the error is found out; and, on the contrary, things which had a very laudable commencement are often perverted; a band of thieves and robbers, having laid aſide their oppreſſion and violence, may become an excellent commonwealth; and a lawful republic, forſaking their humanity, may degenerate into a tribe of ruffians; yet in both the ſame end, *viz.* the *ſecurity* of the members is the end of conſociation.

* Thus, tho' certain piratical republics in Afric were formed rather to plunder and oppreſs, than merely for common ſafety, and therefore in this reſpect they differed very little from bands of robbers; yet they had likewiſe common ſecurity for their end, as well as lawful republics have; and for that reaſon, they put themſelves in a ſtate of defence againſt all external force; and were rigid in the diſtribution of juſtice,

Ne vaga proſiliat frænis natura remotis.

This then is the common end of all civil ſocieties; but with this difference, that the former are not very ſollicitous about virtue and equity, if that end be but obtained; whereas the latter propoſes that end, in order that they, as the apoſtle expreſſes it, "may lead under kings, and all in authority, quiet and peaceable lives, with all godlineſs and honeſty," 1 Tim. 2. 2.

Sect. CVI.

The end of civil ſociety is the ſecurity of its members.

Since the common *ſecurity* of the members is the end of all civil ſocieties (§ 105); but it is from the end of a ſociety that we muſt judge of the means, and of the rights and duties of its members (§ 14); the conſequence is, that they who unite into ſociety, ought to do all, without which the common end, *viz. ſecurity*, cannot be obtained. Now, ſince the violence which is obſtructive of public ſecurity, conſiſts in the united force of wicked men (§ 103), it is neceſſary that others, who would ſecure themſelves againſt ſuch violence, ſhould unite their ſtrength; and therefore it is proper, that as many men ſhould form themſelves into a more large and compounded ſociety, as may, with probability, be ſufficient to repel, by juſt force, the unjuſt violence of injurious neighbours *.

Sect. CVII.

A republic conſiſts in a multitude of men.

A ſtate or republic does not conſiſt, as Nicias ſays in Thucydides, 7. 14. and Themiſtocles in Juſtin. hiſt. 2. 12. in a territory, in towns, in walls, in houſes, but in men; nor is it requiſite to conſtitute a civil ſtate, that whole families, compoſed of perſons of both ſexes, be united; but it is ſufficient, if many conjoin their forces and minds, ſo as to be able to conquer or outwit their enemies; though it cannot be denied, that a civil ſtate would be but of one age, if not compoſed of ſuch families, but of ſingle perſons, however great its numbers might be, Florus 1. 1. *.

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* Hence it is an idle queſtion, what number of perſons conſtitutes a ſociety? For tho' Apuleius thought fifteen freemen might conſtitute a republic, Apol. p. 304, and others have ſaid three tolerably numerous families might make one, Val. Max. 4. 4. 8. 4. 6. 5. yet the authors of theſe opinions ſeem not to have had common ſecurity as the end of ſociety in their view, ſince that end cannot be accompliſhed by fifteen perſons joined together; but the number ought to be increaſed, in proportion to that of the enemy feared. Accordingly, all hiſtory ſhews us, that ſtates were very ſmall in their beginnings, or confined within the narrow limits of a ſmall territory. Nor were there any larger ones in their neighbourhood, to make them afraid. But ſo ſoon as large empires were formed by oppreſſing and ſwallowing up their neighbours, leſſer republics united either into one larger republic, or making a confederacy, become a ſyſtem of republics, that they might be able to reſiſt their mighty and powerful neighbours, as it happened in Greece after the Perſian overthrow, and in Germany after the victories of Druſus and Germanicus.

* That a republic may conſiſt without a territory, without towns, walls, or houſes, is plain from the example of the Hebrews, a moſt ſacred republic, which wandered forty years in the deſerts of Arabia, without any fixed habitation or abode, without houſes or walls, till they were ſettled in the promiſed Paleſtine, Numb. xiv. And that a republic may conſiſt without families, none will deny, who has conſidered the Papal monarchy, which hath been accurately deſcribed by Puſendorff and Thomaſius. I ſhall not now appeal to the kingdom of the Amazons; all that is ſaid of it having been called into doubt by many learned men. Whence it may be concluded, that it is a convenient number of men united by conſent, that conſtitutes a republic; and that ſuch a ſociety does not become extinct, tho' their territory may be occupied by others, while its members ſurvive that loſs, and are in a condition to contend with their enemies. Thus the republic of Athens ſtill ſubſiſted, tho' Attica was entirely poſſeſſed by the Perſians, while the fleet ſubſiſted, into which Themiſtocles, with the whole body of the people, and every thing they could carry with them, had betaken himſelf, Nepos Themiſtoc. cap. 2. And therefore, Adimantus's ſpeech to him was very fooliſh, and his anſwer was excellent. The former ſaid he had no right to pretend to give law or diſpence juſtice, having no country. The other anſwered, that he had both a territory and a city much larger than theirs, while he had two hundred well armed and manned ſhips, an invaſion from which none of the Greeks could reſiſt, Herodot. hiſt. l. 8. p. 305. edit. Hen. Steph.

Sect. CVIII.

They muſt conſent in the end and the means.

Since a republic conſiſts in the union of ſuch a number, whoſe united force is not unequal to that of their neighbours (§ 105); but there can be no ſociety without conſent (§ 13); the conſequence is, that civil ſtates or republics are conſtituted by an interveening contract, whether ſome men voluntarily coalite into ſociety, or whether their conſent was at firſt extorted by violence, or whether ſome men acceded in either of theſe ways to a republic already formed; or whether, in fine, the deſcendants of ſuch citizens are preſumed, from their having been bred up in a ſociety, as ſome time to ſucceed to their progenitors (§ 16) in it, to have conſented to continue members of it *.

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* Thus the inhabitants of Albania, and that medley of ſhepherds and thieves who attaching themſelves to Romulus, built huts on the banks of the Tiber, from the beginning conſented to form that republic. Dion. Halicar. antiq. l. 1. p. 72. Thus the Sabines acceded voluntarily to the Romans, after they had formed themſelves into a commonwealth, Liv. 1. 13. On the other hand, the Albans, their capital being deſtroyed, augmented the Roman ſtate againſt their will, l. 1. 29. Nor was it ever doubted of, that the poſterity of Roman citizens were Roman citizens, unleſs they either voluntarily abandoned their country, or being exiled, were forced much againſt their inclination to leave it.

Sect. CIX.

The firſt pact of thoſe who voluntarily conſtitute a republic.

Hence it is plain, that civil ſtates, like other ſocieties, are conſtituted or augmented either by *voluntary* conſent, or by *forced* conſent (§ 15). In the former caſe, the firſt and principal pact muſt be that by which all conſent to conſtitute the ſame ſtate or republic. And ſince every pact ought to be free, and may be made upon conditions, it is ſelf-evident that he who does not conſent, or whoſe terms are not agreed to, remains without that ſociety, and is his own maſter *.

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* This would hold, if any new republic were to be conſtituted at preſent by conſent. But it happens rarely that any one ſtipulates for himſelf and his family in

this manner in a republic already conſtituted. Yet we have an example in Ottanes of Perſia, mentioned by Herodotus, hiſt. l. 3. p. 124. who, after the Magi, who had uſurped the government were deſtroyed, when the Perſian princes were aſſembled to conſult together about a form of government, his opinion for a popular ſtate not being approved, at laſt ſaid: “ Ye factious men, ſince ſome of us muſt be named king by lot, or by the election of the multitude, with the permiſſion of the Perſians, or ſome other way, I ſhall not oppoſe you, becauſe I neither deſire to be above you, nor will I be below any one of you. Upon this condition therefore do I give up my right of empire, that neither I, nor any of mine, ever be ſubject to any of you.

Sect. CX.

Their ſubſequent reſolution.

But ſince members of the ſame ſociety muſt conſent to the ſame end and means (§ 13), which conſent cannot be expected in a great multitude, unleſs the ſociety be rectoreal; therefore ſome governing power muſt be inſtituted, by the will of which the whole people is to be ruled (§ 18); and the conſequence is, that this multitude ought to determine what the model of government ought to be *; and tho' they be not obliged to ſtand to the reſolutions of the reſt, who conſented to the future republic, only upon condition that a certain form of government in it ſhould be agreed to, if another form pleaſe the people (§ 109); yet thoſe who entred into the firſt pact without any conditions, ought to ſubmit to the plurality of ſuffrages.

* They are much miſtaken who affirm there never was any ſuch pact. The Roman hiſtory alone ſufficiently overthrows that aſſertion. For when that rabble of Alba, and herd of ſhepherds and robbers, who had enriched themſelves by many depredations, had agreed to coaleſce into one republic, Romulus having called an aſſembly, or convention, asked the people what form of government they would prefer. Dionyſius Halicar. has fully deſcribed the whole affair, Antiq. Rom. l. 2. p. 80. where he tells us the anſwer of the people, which was to this purpoſe.

"We do not ſtand in need of a new form of government, nor will we change that approved by our anceſtors, and handed down from them to us; but we will follow their ſentiment who founded our preſent form of government, not without great prudence, and are content with the condition we are now in. For why ſhould we find fault with it, ſince we have enjoyed under kings the goods of the higheſt eſtimation among mankind, liberty and empire over others. This is our opinion concerning our form of government."

Sect. CXI.

Another pact.

A form of government being agreed upon, nothing remains to conſtitute a perfect civil ſociety, but to nominate the perſon or perſons a people would have to rule over them *, and to preſcribe the form of government agreed upon in the former pact, to him or them; which preſcription will then become, properly ſpeaking, the *fundamental law* of the republic, (ſince things ſettled by pacts are called *laws*); and therefore it binds the governors, whether one or many, no leſs than the ſubjects; ſo that nothing is right that is done contrary to this primary law, or eſſential conſtitution of the ſociety.

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* We find this order obſerved in the inſtitution of the Roman republic, according to Dionyſius Halicarn. For when the greater part of the Albans who had been inured to kingly government, had reſolved to preſerve that form of government, being then ſollicitous to chooſe a king, they added: "And this honour we think is due to none ſo much as to you, as well on account of your virtue as your birth; but chiefly, becauſe you have been the leader of this colony; and we have experienced in your conduct, in all your words and deeds, great prudence and valour." In like manner, a little after, when the people was divided into *curiæ* and *tribes*, and a hundred fathers were choſen to compoſe the council or ſenate of the republic, the adminiſtration of the republic was ſo divided, that the care of ſacred things, the conſervation of the laws and cuſtoms, the power of judging in crimes of the higher kinds, the right of propoſing to the ſenate, and of aſſembling the

people, was given to the king; to the ſenate the right of deciding whatever was propounded to them by the king, and paſſing the opinion of the majority into an act or decree; and to the people under the ſenate propoſing, the right of creating magiſtrates, and giving the ultimate authority to laws, and of determining upon war or peace, if the king would permit. This is the fundamental law or conſtitution of this new government, as it is deſcribed moſt accurately by an author excellently verſed in politics, and it laſted till the tyranny of Tarquinius.

Sect. CXII.

Whether the ſame pacts take place when ſociety is conſtituted by perſons under force.

Thus does ſociety ariſe as often as a people voluntarily forms it. But ſo often as a people, brought under dominion by a more powerful one, coaleſces into the ſame republic with their conquerors, the firſt pact is undoubtedly a conſent to form one common republic with them; becauſe, if they did not conſent, they would not accept the terms offered by their conquerors, but rather periſh than put themſelves under ſuch a yoke. But ſuch a people will hardly be conſulted or hearkened to with regard to the form of government, nor in the choice of rulers, but to them will be left little more than the glory of obeying *.

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* Yet this whole matter depends upon the terms and conditions of the ſurrendry, which are commonly better or worſe, according as the victory is more or leſs ambiguous. Thus, while the Sabines and the Romans diſputed upon a very equal footing with regard to the event of war, they thought fit to put an end to it, by ſtriking a league, the articles of which are recorded by Dionyſius. "That Romulus and Tatius ſhould reign at Rome with equal honour and power; that the city ſhould preſerve its name derived from the founder, and the citizens ſhould be called Roman Citizens as before, but all ſhould be called by the common appellation of *Quirites*, from the country of Tatius; that the right of Roman citizenſhip ſhould be given to as many of the Sabines as ſhould deſire it, and that they ſhould be admitted into tribes and curiæ, with their ſacred uſages. Such was this treaty of union, by which

the Sabines were in ſome reſpect permitted to conſtitute the republic.

Sect. CXIII.

So if the conqueror forces a new form of government upon the conquered.

It ſometimes happens, that a new form of government is obtruded upon a conquered people *; and the victorious people ſtipulates to themſelves, that this new republic ſhall pay homage to them, as joined to their republic by an unequal covenant. In which caſe, the nature of the thing ſhews us, that the pacts we have deſcribed above (§ 109, 111), and the decree about a form of government, (§ 110), cannot take place; but the conquered people conſents to all, not voluntarily, but by force.

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* It was the cuſtom of the Athenians to obtrude upon thoſe they conquered a popular ſtate, and of the Lacedemonians to force an ariſtocracy upon all whom they conquered. The reaſons of which are given by Xenophon, de republ. Athen. cap. 1. § 14. and cap. 3. § 10. tom. 3. But one is ſufficient, p. 249. The Athenians eſtabliſhed, and often renewed, after it had been overturned, a popular ſtate among the Samians. But when they were ſubdued by Lyſander the Lacedemonian, he ſet up a decarchy among them in the room of a democracy. What fortunes other ſtates in Greece underwent, according as the Athenians or Lacedemonians had the empire of the ſea, is well known. And that theſe things could not happen without force is perſpicuous to every one.

Sect. CXIV.

All the members of a civil ſtate ought to ſubmit their wills to the ſupreme powers in it.

But as all ſocieties are underſtood to have one underſtanding and one will (§ 19); ſo the ſame muſt be ſaid of a ſtate or republic thus conſtituted. Now, as many aſſociates cannot agree upon the ſame end and means (§ 17), unleſs that buſineſs be committed to ſome one, or ſome certain number; ſo in a ſtate the ſame muſt be done *. But to do this, is the ſame as to ſubmit one's will to that of another;

whence it is plain, that all the members of a republic ought to ſubmit their wills to one or more; and therefore that he or they govern to whom the reſt have ſubmitted their will.

* Many cannot otherwiſe have the ſame will than by conſent in the ſame will; or by ſubmiſſion of all to the ſame will. The firſt cannot be hoped for, as every one will immediately ſee, who hath conſidered the different tempers, turns, genius's and diſpoſitions of mankind. Hence Seneca, ep. 102. "Putas tu, poſſe ſententiam unam eſſe omnium? non eſt unius una. Do you think all can have the ſame mind? no ſingle perſon is of one mind." Therefore the latter way remains, which is ſubmiſſion to the will of one or many. For as a ſhip, however well manned, would periſh, did not all agree to commit their ſafety to one pilot, ſkilled in navigation, who is to exert his utmoſt to ſave the ſhip from ſtorms and rocky ſeas: ſo it is impoſſible that ſo many myriads of men who have coaleſced into one large ſociety, ſhould eſcape the civil tempeſts to which they are continually expoſed, and obtain ſafety and ſecurity, unleſs they be governed by one or more common rulers. Arrian, diſſ. ep. 1. obſerves, "That good citizens ſubmit their wills to the law and authority of the ſtate."

Sect. CXV.

Hence ariſe either monarchical, ariſtocratical or democratical ſtates.

Hence it follows, that there can be no more but three regular forms of republics or civil ſtates. For ſubjects muſt either ſubmit their wills to *one*, to *many*, or to the *whole multitude*. Now, when they ſubmit their wills to the will of one phyſical perſon, hence ariſes *monarchy*, *a kingdom* or *principality* *. But if to the will or decrees of many, thence ariſes *ariſtocracy*. And if to the whole people, that is, to what is decreed by the common ſuffrage of the whole people, then the form of government is *popular*, and called *a democracy*.

* Polybius Hiſt. 6. 2. diſtinguiſhes between *μοναρχίαν* and *βασιλείαν*, *a monarchy* and *a kingdom.* He thus differences them : " The firſt, monarchy, is conſtituted without any art, and by the force of nature: Kingdom follows it, and takes its origine from it, then, when art comes to make emendations." But ſince things, leſs or more poliſhed, do not differ in ſpecies, we ſhall not here take notice of this difference.

Sect. CXVI.

To which are oppoſites, tyranny, oligarchy, and anarchy.

But ſince whether one, many, or all govern, none preſides over the republic by any other right but this, that the reſt of the citizens have ſubmitted their wills to ſuch a governor or governors (§ 114); the conſequence is, that thoſe command unjuſtly; *i. e.* without right, to whom the members of a ſtate have not ſubmitted their will. Wherefore, if one ſuch perſon command, monarchy becomes *tyranny*; if, inſtead of the ſenate of the nobles, a few uſurp the ſupreme command, ariſtocracy degenerates into *oligarchy*; and if, inſtead of the whole people, a certain rabble, conſiſting of the very dregs of the people, manage all things at their pleaſure, democracy degenerates into *ochlocracy* *. Theſe vitious forms of government being very like to the regular ones, the latter eaſily degenerate into the former, as Polybius juſtly obſerves, and experience has abundantly confirmed. Polyb. hiſt. 6. 1.

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* This is obſerved by the moſt excellent politician Polybius, ibidem p. 629. " Therefore, there are ſix kinds of republics : The three we have juſt mentioned, which are in every body's mouth, and three nearly allied to them, the domination of one, of a few, and of the mob ; ſome by tyranny underſtand monarchy, becauſe, as we ſaid above, this author had diſtinguiſhed between monarchy and a kingdom. But he himſelf adds a little after, " a kingdom, when it declines into the diſeaſe to which it is obnoxious, *viz.* a tyranny." In theſe diviſions and definitions, all the writers of morals or politics agree ;

and therefore, there is no need of dwelling long upon them. By whom have they not been repeated?

Sect. CXVII.

What are mixed republics.

Now, ſince theſe regular forms of government may be perverted into as many oppoſite vitious forms (§ 116), it is not to be wondered at, that there are very few ſtates to be found which have choſen any one of theſe three, but that many have compounded all theſe forms into one *, or have ſo mingled two of them together, as that the one form might be a balance or check on the other. And ſince names are generally derived from the better or more eminent part; hence various kinds of kingdoms, ariſtocracies and democracies could not but ariſe, which it very little concerns us, whether they be called *mixt* or *irregular republics.* See Hert. element. prud. civ. 1. 2. 8. p. 2320 & ſeq.

* Polybius pronounces this the beſt form of government, hiſt. 1. 1. p. 628. "'Tis manifeſt, that a republic compounded of the three forms we have mentioned, is the beſt." And cap. 8. p. 638. he highly extols Lycurgus for not having founded a ſimple uniform republic, but for having, by mingling the good qualities of all the beſt republics, compoſed one, conſiſting of all of them blended together, and by that means ſo equally poiſed and balanced it, that it could not degenerate into any of the vicious forms we have mentioned, but was kept entire by various checks. So Dionyſius antiq. l. 2. p. 82. after having told us, that the Roman republic was conſtituted by Romulus much after the ſame manner, he adds, " This form of a republic I prefer to all others, as being equally fit for peace or war." I paſs by ſeveral teſtimonies to the ſame purpoſe by Cicero apud Non. Marcell. de verb. prop. 4. 292. by Zeno apud Laert. 7. 131. and by Tacitus annal. 4. 33.

Sect. CXVIII.

What are ſyſtems of republics.

Again, ſince whole ſocieties may coaleſce into a larger body (§ 17); hence it follows, that many republics may, each preſerving its form of government and its independency intire, make a confederacy for acting with common conſent for their common preſervation and ſafety *. Such confederated republics were the Achaian ones; and ſuch are called *ſyſtems of republics.*

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* Puſendorff, ſingulari diſſertat. de ſyſtematibus civitatum, to be found in the collection of his diſſert. Acad. ſelectæ, p. 210. & ſeq. and de jure naturæ & gentium, 7. 5 16. thinks ſyſtems of ſocieties are formed when ſeveral ſeparate kingdoms, either by convention, or by marriage, or by ſucceſſion, or by conqueſt, come to have one king, but in ſuch a manner that they do not become one kingdom, but are governed each by its own fundamental laws; or by a treaty of alliance. And Hertius elem. prud. civil. is of the ſame opinion, 1. 12. 6. & ſeq. But either one kingdom is ſo ſubjected to another, that it hath no ſhare in the common government, as anciently the kingdoms of Macedonia, Syria and Egypt were ſubjected to the Romans; or each retains its own conſtitution, as now the German empire, Hungary and Bohemia; or they coaleſce in ſuch a manner as to compoſe one kingdom, as now England and Scotland, Poland and Lithuania. In the firſt caſe, the conquered kingdom is reduced into a province, and does not conſtitute one ſyſtem with the other. Nor in the ſecond caſe can two kingdoms be ſaid to have coalited into a ſyſtem, ſince they have nothing in common, but one prince who ſuſtains two characters. There remains therefore the third caſe only, in which two kingdoms, or two bodies of people uniting their will and ſtrength for common defence, conſtitute one larger ſociety, and therefore are a ſyſtem of republics, according to our definition. See G. G. Titius ad Puſendorff de offic. hom. & civ.

Sect. CXIX.

A monarch has a right to any title of honour.

Since *monarchy* is formed as often as all the ſubjects ſubmit their will to one perſon (§ 115); the conſequence is, that it is the ſame what title of honour he aſſume to himſelf, monarch, emperor, king, duke, or prince; and that having no ſuperior, he may change his title, and take any other at his pleaſure *, tho' he cannot ſo eaſily force other kings or republics to acknowledge any new title he may take; and therefore it is more prudent for a prince, before he aſſumes to himſelf any new title or dignity, to know the ſentiments of other kings and ſtates about it, and expreſly to ſtipulate to himſelf ſuch new titles of honour.

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* For ſince ſupreme powers live in a ſtate of nature with regard to one another, which ſtate is a ſtate of liberty and equality (§ 4. 5. 6.) it follows, that monarch is equal to monarch, and nothing hinders any one from enjoying as much dignity in his own ſtate as any other in his; and therefore any one may take any title to himſelf, to ſupport which he finds himſelf equal. We have ſeen in our times two examples of it, to which even future ages will pay reverence, in Frederick I. King of Pruſſia, and Peter I. Emperor of Ruſſia; the former of whom firſt took the title to himſelf of King, and the other of Emperor, and both of whom had theſe titles acknowledged to them afterwards by other Kings and Emperors. It is true Pope Clement XI. ſhewed his intolerable arrogance, when Frederick I. a prince worthy of immortal glory, took the title of King to himſelf, vainly pretending, that it depended on him alone to make Kings. But this doctrine, more becoming a Hildebrand than Clement, and deteſted even by princes the moſt devoted to the Romiſh church, hath been ſufficiently refuted by the worthy and learned chancellor of our univerſity Jo. Petr. a Ludewig, who had formerly fully treated that controverſy in ſeveral ſmall treatiſes, *de auſpicio regio*. Add to theſe a very elegant treatiſe by V. C. Everardus Otto, de titulo Imperatoris Ruſſorum, inſerted among his diſſertat. juris publici & privati, part. 1. p. 135.

Sect. CXX.

He ſolely exerces all the rights of majeſty.

Hence it is evident that a monarch governs all by his will; and tho' he may take counſel from perſons of prudence and experience, yet their opinions are not ſuffrages but counſels; and that he acts at all times, and every where; ſo that it was juſtly ſaid in the times of Hadrian the Roman emperor, "Roma eſt, ubi imperator eſt," where the Emperor is, there is Rome, Herod. hiſt. 1. 6. There is therefore no right of majeſty which a prince may not exerce (§ 111); yea, a kingdom hardly deſerves to be called a monarchy in which any other exerces any of the rights of majeſty independently of the king *.

* For the underſtanding and will, like that of one moral perſon, ought to be one (§ 114). Now, if any exerces any of the rights of majeſty whatſoever, independently of the king, the whole republic would not have one underſtanding and will. Wherefore, it would not be one republic, but a republic within a republic. And to this we may apply what Homer ſays, Iliad. 2. "'Tis not good that many ſhould rule: Let there be one emperor, one king." Tho' we are not ignorant that tyrants have often abuſed this maxim. See Sueton. Calig. cap. 22.

Sect. CXXI.

The difference between a monarch and a tyrant.

But tho' a monarch governs all by his will, (§ 120), yet he ought not to act otherwiſe than the end of the ſtate, the ſecurity of its members requires (§ 105); whence it follows, that the ſecurity and happineſs of the people ought to be the ſupreme law in a monarchy; and in this does it differ from tyranny, which refers all to its own ſecurity and advantage; and which being acquired by villainous practices, cannot be retained by good methods, and therefore is very little concerned about the public welfare, provided it can ſuſtain and preſerve itſelf *.

* To this head belong all the tyrannical arts of which Ariſtotle hath treated moſt accurately, Polit. 5. 10. Tyrants, conſcious to themſelves of the public hatred, are fearful and ſuſpicious; and therefore, being jealous of virtue, they oppreſs and bear it down, and cut off the heads of the more eminent and worthy, like poppies which overtop the reſt: They bear hard upon the innocent, under the pretext of treaſon, the only crime of thoſe who

have no crime: They ſow diſcord and animoſities among their ſubjects: They extinguiſh all the light and ſplendor of uſeful literature: They prefer foreigners to natives: The latter they bereave of all dignities and riches, and reduce to the extremeſt miſery: But how repugnant all this is to the end of civil ſociety, and how unjuſt, is glaring. Polyb. hiſt. 2. 59. p. 202. "For the very name *Tyrant*, hath annexed to it all manner of wickedneſs and impiety, and includes in it all the injurioufneſs and criminality that is to be found amongſt mankind."

Sect. CXXII.

How the rights of majeſty are exerced in ariſtocracy.

Again, from the definition of ariſtocracy, we infer, that all the rights of majeſty or ſovereignty belong to the whole ſenate or college of nobles, and cannot be exerced but by the concurring conſent of the whole ſenate. There muſt therefore be a certain place where they aſſemble to conſult about the common affairs of the ſtate; and likewiſe a certain appointed time, on which the ordinary ſenate is held, unleſs ſome unexpected emergencies demand the calling of a ſenate out of the ordinary courſe. Beſides, becauſe the conſent of many can hardly be expected but by ſubmiſſion (§ 17); the conſequence is, that even in ariſtocracy the ſmaller number ought to ſubmit to the greater number; and therefore that the voice of the plurality ſhould determine; but in an equality of voices, nothing can be done, unleſs he who preſides give the deciding voice, or the caſe be ſuch as that there is place for the *Calculus Minervæ* *. Moreover, ſince the vitious form of government, that is the oppoſite of Ariſtocracy is called *oligarchy* (§ 116), and into it does ariſtocracy eaſily degenerate (ibidem); the very nature of the thing demands that no decree be valid, unleſs it be made when the greater part of the ſenate is preſent, *e. g.* two thirds.

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* The *Calculus Minervæ* is, when in an equality of condemning and abſolving voices, the pannel is acquitted. For when Oreſtes was tried for parricide, thoſe who con-

demned him being ſuperior to his abſolvers by one voice only, Minerva is ſaid to have added one to the latter, that in an equality of ſuffrages, he might be abſolved. And this became afterwards almoſt an univerſal law, as Euripides makes Minerva foretel it ſhould, in Iphigen. Taur. v. 1268. See Boecler. diſſert. ſingul. de calculo Minervæ, and a diſſertation by Henr. Cocceii de eo quod juſtum eſt circa numerum ſuffragiorum, & de calculo Minervæ, cap. 7. where this learned author gives this natural reaſon for the practice, "That the firſt ſtate of the perſon accuſed is changed by condemnation, and is continued by abſolution; and therefore nothing is done: Wherefore, ſince the majority only can change a former ſtate and introduce a new one, it follows, that in the caſe of equality nothing is done; and conſequently, the firſt ſtate of the perſon continues to take place, and he is abſolved.

Sect. CXXIII.

How in democracy.

It is the ſame in a democracy: For ſince in it whatever is decreed by the common voice of the whole people is the will of the whole republic or ſtate (§ 115), it follows, that the ſovereignty belongs to the people, and that they have the right to exerce all the rights of majeſty. But ſince that cannot be done unleſs the people hold aſſemblies to conſult about their affairs, it is evident, that here alſo a certain place and ſtated days muſt be fixed for the public aſſemblies; and that whatever is reſolved by the plurality of peoples ſuffrages in tribes, in *curiæ*, or ſingly, is valid. In fine, that a democracy may degenerate into an ochlocracy *, if the right of voting be allowed to the minority of the people, the reſt being excluded or abſent, is evident from the very definition of ochlocracy (§ 116).

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* Then is the condition of the republic moſt miſerable, eſpecially if demagogues interpoſe their arts to ſtir up the people and promote faction, till one of them finds an opportunity of becoming tyrant; and the ſame happens that Phædrus repreſents to have been the fate of Athens, Fab. I. 2.

Athenæ quum florerent æquis legibus:
Procax libertas civitatem miſcuit,
Frænumque ſolvit priſtinum licentia.
Hinc, conſpiratis factionum partibus,
Arcem tyrannus occupat, Piſiſtratus.

Concerning the artifices of demagogues, ſee Hertius Elem. prud. civil. part. 2. § 23. § 24. p. 496.

Sect. CXXIV.

How in a mixed republics.

But ſince mixed republics, as they are called, are ſometimes the beſt, and were formed on purpoſe that one form might balance another, and keep it within due bounds (§ 107), it is plain, that all, or ſome of the rights of majeſty, ought to be ſo ſhared in ſuch ſtates, either among the ſenators, or among the people, that one order cannot determine any thing without conſulting the other, and not to be ſo divided, that one may act either without the knowledge, or againſt the will of the other. For, in this caſe, nothing can hinder a republic from ſpringing up within a republic *.

* The Roman ſtate became monſtrous when it degenerated into ſuch a condition that the mob, ſtirred up by the factious fury of the tribunes, made laws, condemned or abſolved, and did every thing without conſulting with the reſt of the people; and the people neither made laws nor adminiſtred juſtice, nor determined concerning war or peace, without the populace. But when inſtead of the people a certain rabble or mob decides every thing as they pleaſe, the popular ſtate is corrupted into an ochlocracy; and that the Roman ſtate was then not very far from ſuch a condition, is very evident.

Sect. CXXV.

How in ſyſtems of republics.

As to *ſyſtems of republics*, ſince they are either conſtituted by the coalition of two kingdoms into one under a common head (§ 118), or by a confederacy between ſeveral independent ſtates (ibid.) it is plain, in the former caſe, that unleſs they be diſtinct, perfect kingdoms, beſides a common king, they ought to have a common ſenate, to which all the orders of both kingdoms are called proportionably to their ſtrength. But, in the latter caſe, each ſtate exerciſes by itſelf, at its own pleaſure, all the immanent rights of ſovereignty; and the tranſeunt rights, relative to their common ſecurity, ought to be exerciſed in a common council, compoſed of delegates from each, which is either perpetual or temporary; and in which all affairs concerning their common ſecurity are determined, the delegates having firſt conſulted each his own ſtate *.

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* Such of old was the Amphyctionian council, of which ſee Boecler. diſſert. de Amphyct. and Ubbo Emmo vet. Græc. Tom. 3. p. 305. Of this we have an example at preſent in the moſt flouriſhing ſtates of Holland and Switzerland, which are deſcribed by Joſ. Simlerus, Sir Richard Temple, and other learned men; ſo that we need not ſay any thing of them.

Sect. CXXVI.

There may be a great diverſity of ſyſtems of republics.

But becauſe ſuch confederacies chiefly depend upon the articles or terms of the agreement, there cannot but be a great diverſity in this matter; and ſome will be more cloſely united, and others more laxly; ſome will have more, and ſome leſs in common. Thus ſome may have, by confederacy or treaty, a common treaſury, a common mint, and a common armory, and others not. In fine, ſome may have a certain preſident, who is guardian of the confederacy, and takes the chair in the council, and others may be confederated in a very different manner; and, in a word, neither the right of ſuffrage, nor the manner of contributing towards the common ſecurity, nor any of the other conſtitutions can be every where, or in all confederacies the ſame.

REMARKS on this chapter.

Firſt of all, it is worth while to obſerve here, That tho' it be very certain that mankind may be very happy, and arrive at a conſiderable degree of perfection in ſciences and arts, to great politeneſs as well as opulence, in ſegregate families living independently one of another, or with regard to one another, in a ſtate of natural equality and liberty ; yet, as it is beyond all doubt on the one hand, that an ill-conſtituted civil ſtate is the ſource of the greateſt miſery mankind can fall into ; ſo on the other hand, it is equally plain from the nature of things, and from experience, that there is a perfection and happineſs attainable by a rightly conſtituted civil ſtate, to which mankind can no otherwiſe attain. Now mankind may be juſtly ſaid to be fitted and deſigned for the ſtate of the greateſt perfection attainable by them in conſequence of their frame ; and therefore to be deſigned for the civil ſtate, by which the greateſt perfection and happineſs of mankind is attainable. There muſt be means to an attainable end ; and all means cannot poſſibly be equally fit for attaining the ſame end : But any end attainable by man in conſequence of his having the means for attaining to it in his power, is, properly ſpeaking, an end within human reach, according to the laws of human nature. And it is but doing juſtice to the Author of nature, and but ſpeaking of the end for which mankind is deſigned by the Author of all things, in the ſame manner we ſpeak of the ends for which any mechanical ſtructure of nature's production (as the human body, or any other animal body) or any mechanical ſtructure produced by human art, (as a ſhip, a watch, &c.) is deſigned, to ſay that mankind are principally deſigned by the Author of nature for the beſt end, or the higheſt perfection and happineſs within human reach, in conſequence of man's frame and conſtitution, the laws of his nature, and the means within his power. If therefore the higheſt perfection and happineſs within human reach be attainable, and only attainable in a rightly conſtituted civil ſtate, and if men be ſufficiently impelled to, and furniſhed for rightly conſtituting civil ſtate, man may be ſaid to be intended for rightly conſtituted civil ſtate, and all the perfection and happineſs attainable in it, or by it, in the ſame ſenſe that any animal ſtructure, or any machine, is ſaid to be intended for its end. Our concluſion muſt hold, if the premiſes from which it is drawn be true.

Now, that there is a very high degree of perfection and happineſs attainable by man in a rightly conſtituted civil ſtate, not otherwiſe attainable by man, will appear from comparing civilized ſtates one with another, and with nations living without any order deſerving the name of civil government. But the manifold advantages of rightly conſtituted civil government having been fully proved by many authors, Harrington, Sydney, Locke, among the moderns, and by Plato, Ariſtotle, Polybius, Cicero, and others among the ancients; I ſhall only add upon this head, a very remarkable ſaying of one ancient, with regard to the greateſt happineſs attainable by man. Hippodamus Thurius Pythagor. de felicitate; having deſcribed the principal ingredients of human happineſs, ſays, — *Quæ quidem omnia contingent ſi quis rempublicam bene conſtitutam nanciſcatur. Id quod quidem* Amaltheæ *quod dicitur cornu voco. Etenim in recta legum conſtitutione ſunt omnia; neque maximum naturæ humanæ bonum vel exiſtere abſque ea, vel comparatum & auctum permanere poſſit. Nam et virtutem, & ad virtutem viam in ſe continet; quandoquidem in ea partim naturæ bona procreantur, partim & mores & ſtudia; leges optime ſe habent & recta ratio, pietas ſanctimonia magnopere vigent. Quamobrem qui beatus futurus & feliciter victurus eſt, eam in bene conſtituta republica & vivere; neceſſe eſt & mori*, &c. "All theſe bleſſings and advantages will accrue to one from a well conſtituted republic. This we may juſtly call the horn of *Amalthea*, the horn of plenty and felicity. For all depends upon the good orders, conſtitutions and laws of a ſtate: Nor can the greateſt good of mankind be attained, or being attained, be preſerved, without right government. A well framed government includes virtue, and the way to virtue in it: Good orders make good men: There the goods of nature grow up as in their proper ſoil; and there good manners and uſeful ſtudies and employments will flouriſh: There the laws direct and impel into the right paths; and there reaſon, virtue, piety, authority, muſt have their greateſt ſplendor and vigour. Wherefore, he who would be as happy as man can be, and would continue while he lives to be ſuch, muſt live and die in a well framed, a well conſtituted or balanced civil government, *&c.*"

2. But let me juſt obſerve, in the ſecond place, that ends and means to ends, can only be learned from nature itſelf by experience, and reaſoning from experience. This muſt be equally true with regard to natural and moral ends and means. The conſequence of which is, that the political art required time, obſervation and experience, to bring it to perfection, as well as natural or mechanical arts. And for this reaſon, in very early times of the world, men could not be ſo much maſters of the ſcience upon which the framing of government aright muſt depend, as to have had all the advantages and diſadvantages of different governments, all the various effects of different moral or political conſtitutions in their view, in framing a government: They could only learn theſe natural connexions of moral things from experience. And therefore, in treating of government, two ſeparate enquiries ought never to be confounded; the one of which is, "what ends right reaſon dictates to mankind as the ends to be propoſed in conſtituting civil government; and what means, *i. e.* what orders and conſtitutions it points out as the proper means in order to attain theſe good ends." And the other is, "how in fact various governments were formed, and how,

being formed, they changed gradually their frame to the better or worſe." The one is a queſtion of fact or hiſtory; and the principal advantage reaped by hiſtory, is inſtruction in the natural effects of various conſtitutions in different ſituations; or the knowledge of what moral connexions and cauſes produce in different circumſtances, and the knowledge of the riſe of different circumſtances, from internal or external cauſes; which knowledge has the ſame relation to moral theory in moral philoſophy, that the hiſtory of facts in nature, with regard to the operation of natural cauſes in different circumſtances, has to natural theory or phyſics: that is, it is the only ſolid baſis in both to build upon. For as in phyſics it is now agreed that we can only come to ſolid or real knowledge by induction from experiments; ſo in morals and politics it is equally true, to uſe the words of a great man often quoted in theſe remarks, "To make principles or fundamentals belongs not to men, to nations, nor to human laws. To build upon ſuch principles or fundamentals as are apparently laid by God in the inevitable neceſſity or law of nature, is that which truly appertains to men, to nations, and to human laws. To make any other fundamentals, and then build upon them, is to build caſtles in the air." The other queſtion ſuppoſes knowledge of human affairs, and the natural operations of moral cauſes, learned in this way from fact, and reaſoning from fact or experience; and it is properly a philoſophical enquiry into what ought to be done in conſequence of the natural operation of moral cauſes, or of the laws of human nature, known by experience, in order to frame ſuch a civil government as would make its members as happy as men can be. And it is, when it proceeds upon facts or experiments, the moſt pleaſant and uſeful of all phyloſophical enquiries; and that certainly, which, of all other ſtudies, beſt becomes thoſe, who, by their natural happy lot, are delivered from drudgery to their backs and bellies. Nay, may I not ſay, that it is the ſtudy, to which, if ſuch do not betake themſelves chiefly, they are abſolutely inexcuſable. For ſure, if virtue and benevolence be not empty names, they muſt lie under the ſtrongeſt, the moſt indiſpenſable obligations to qualify themſelves for promoting human happineſs: they are bound and obliged to be tutors and guardians to mankind. And whatever other employment they may carve out to themſelves, or however thoughtleſly they may waſte their time, if they neglect this, they neglect the noble work providence hath put into their hands to do. A work, (a happineſs ſhould I not rather ſay) than which nothing can be higher, nobler, or more glorious. It is a work or employment, and a happineſs of the ſame kind with the work, employment, and happineſs of the great Author of nature, the all-perfect God.

But let me obſerve, in the third place, that tho' our author, in ſpeaking of the origine of civil governments, (which is a queſtion of fact or hiſtory) hath frequently come very near the matter, eſpecially in the ſcholium, where he ſpeaks of the kingdom founded by Nimrod, yet he hath not fully ſpoke it out: and therefore it will not be improper here to lay before the reader a ſeries of propoſitions relative to that ſubject; *i. e.* which ſhew government in its natural cauſes, or in its natural procreation and natural variations. And theſe truths having a neceſſary connexion with what hath been already taken notice of in our remarks with regard to property, or the acquiſition of dominion over things, they will be eaſily underſtood; ſo that there will be but little occaſion to do more than juſt mention them. And that I ſhall, for the greater part, do in the very words of an excellent author, unknown to foreign writers, from whom we have already borrowed ſo many uſeful obſervations.

1. The diſtribution of property, ſo far as it regards the nature or procreation of government, lies in the over-balance of the ſame. Juſt as a man, who has two thouſand pounds a year, may have a retinue, and conſequently a ſtrength that is three times greater than he who enjoys but five hundred pounds a year. Not to ſpeak of money at this time, (*of that we have already treated in another remark*, viz. *the remarks on chapter* 13. *l.* 1. *which the reader may tu n to)* which, in ſmall territories, may be of like effect; but to inſiſt upon the main, which is property in land, (becauſe to property producing empire, it is required that it ſhould have ſome certain root, or foot-land, which, except in land, it cannot have, being otherwiſe, as it were, upon the wing;) to inſiſt upon this, which is the main, the over-balance of this, as it was at firſt conſtituted, or comes inſenſibly to be changed into a nation, may be eſpecially of three kinds; that is, in one, in the few, or in many. The over-balance three to one, or thereabouts, in one man againſt the whole people, creates abſolute monarchy; as when Joſeph had purchaſed all the lands of the Egyptians for Pharaoh. The conſtitution of a people in this, and ſuch caſes, is capable of intire ſervitude. *Buy us and our land for bread, and we and our land will be ſervants to Pharaoh,* Gen. xlvii. 19. If one man be ſole landlord of a territory, or overbalance the people, for example, three parts in four, he is Grand Signor; for ſo the Turk is called from his property; and his empire is abſolute monarchy. The overbalance of the land to the ſame proportion in the few againſt the whole people, creates ariſtocracy, or regulated monarchy. The conſtitution of a people in this, and the like caſes, is *(nec totam libertatem, nec totam ſervitatem pati poſſunt, Tacit.)* neither incapable of intire liberty, nor of intire ſervitude. And hereupon Samuel ſays to the people of Iſrael, when they would have a king, *He will take your fields, even the beſt of them, and give them to his ſervants,* 1 Sam. viii." If a few, or a nobility with the clergy be landlords, or over-balance the people to the proportion above-mentioned, it makes what is called *the Gothic balance.* (See this treated of at large by Mr. Harrington). The over-balance of land to the ſame proportion in the people, or

where neither one nor the ſew over-balance the whole people, creates popular government; as in the diviſion of the land of *Canaan* to the whole people of Iſrael by lot. The conſtitution of a people in this, and the like caſes, is capable of intire freedom; nay, not capable of any other ſettlement; it being certain, that if a monarch, or ſingle perſon, in ſuch a ſtate, thro' the corruption or improvidence of their councils, might carry it; yet, by the irreſiſtible force of nature, or the reaſon alledged by Moſes, (*I am not able to bear all this people alone, becauſe it is too heavy for me*; Numb. xi. 14.) he could not keep it, but out of the deep waters would cry to them, whoſe feet he had ſtuck in the mire. If the whole people be landlords, or hold the lands ſo divided among them, that no one man, or number of men, within the compaſs of the few, or ariſtocracy over-balance them, the empire, (without the interpoſition of force) is a common-wealth.

2. If force be interpoſed in any of theſe three caſes, it muſt either frame the government to the foundation, or the foundation to the government; or holding the government not according to the balance, it is not natural, but violent; and therefore, if it be at the devotion of a prince, it is tyranny; if at the devotion of a few, oligarchy; or if in the power of the people, anarchy. Each of which confuſions, the balance ſtanding otherwiſe, is but of ſhort continuance, becauſe againſt the nature of the balance, which not deſtroyed, deſtroys that which oppoſes it. But there be certain other confuſions, which being rooted in the balance, are of a longer continuance, and of worſe conſequence. As firſt, where a nobility holds half the property, or about that proportion, and the people the other half; in which caſe, without altering the balance, there is no remedy but the one muſt eat out the other; as the people did the nobility in Athens, and the nobility the people in Rome. Secondly, when a prince holds about half the dominion, and the people the other half, (which was the caſe of the Roman Emperors, planted partly upon their military colonies, and partly upon the ſenate and the people) the government becomes a very ſhambles both of the princes and the people. Somewhat of this nature are certain governments at this day, which are ſaid to ſubſiſt by confuſion. In this caſe, to fix the balance is to entail miſery; but in the three former, not to fix it, is to loſe the government; wherefore, it being unlawful in Turkey, that any ſhould poſſeſs land but the Grand Signior, the balance is fixed by the law, and that empire firm. While Lacedemon held to the diviſion of land made by Lycurgus it was immoveable, but breaking that, could therefore ſtand no longer.

3. Fixation of government cannot be provided for without fixing the balance of property. But fixation of the balance of property is not to be provided for but by laws. Now, the laws whereby ſuch proviſion is made, are commonly called *Agrarian laws*. This kind of law fixing the balance in lands, was ſettled by God himſelf, who divided the land of Canaan to his people

by lots; and it is of ſuch virtue, that wherever it has held, that government has not altered, except by conſent; as in that unparallelled example of the people of Iſrael, when being in liberty they would needs chooſe a king. But without an *Agrarian*, no government, whether monarchical, ariſtocratical or popular, has a long leaſe. And as governments are of divers or contrary natures, ſo are ſuch laws. Monarchy requires of the ſtandard of property, that it be vaſt or great; and of *Agrarian* laws, that they hinder receſs or diminution, at leaſt in ſo much as is thereby entailed upon honour. But popular government requires that the ſtandard be moderate, and that its *Agrarian* prevent accumulation. In a territory not exceeding England in revenue, if the balance be in more hands than three hundred, it is declining from monarchy; and if it be in fewer than five thouſand hands, it is ſwerving from a commonwealth. In conſequence of the ſame principles, wherever the balance of a government lies, there naturally is the militia of the ſame; and againſt him or them, wherein the militia is naturally lodged, there can be no negative voice. If a prince holds the over-balance, as in Turkey, in him is the militia, as the Janizaries and Timariots. If a nobility has the over-balance, the militia is in them, as among us was ſeen in the Barons wars, and thoſe of York and Lancaſter; and in France is ſeen, when any conſiderable part of that nobility rebelling, they are not to be reduced, but by the major part of their order adhering to the king. If the people has the over-balance, which they had in Iſrael, the militia is in them, as in the four hundred thouſand firſt decreeing, and then waging war againſt Benjamin; where it may be enquired, what power there was on earth having a negative voice to this aſſembly! This always holds where there is ſettlement, or where a government is natural. Where there is no ſettlement, or where the government is unnatural, it proceeds from one of theſe two cauſes, either an imperfection in the balance, or elſe ſuch a corruption in the lawgivers, whereby a government is inſtituted contrary to the balance. Imperfections of the balance, that is, where it is not good or downright weight, cauſe imperfect governments; as thoſe of the Roman and Florentine people, and thoſe of the Hebrew Kings and Roman Emperors, being each exceeding bloody, or at leaſt turbulent. Government againſt the balance in one is tyranny, as that of the Athenian Piſiſtratus; in the few it is oligarchy, as that of the Roman Decemvirs; in the many, anarchy, as that under the Neapolitan Mazinello.

4. From theſe principles will the reader find the more remarkable changes in the Athenian, Spartan, Roman, and other ſtates, accounted for naturally by Mr. Harrington. And from them he juſtly infers, that wherever, thro' cauſes unforeſeen by human prudence, the balance comes to be intirely changed, it is the more immediately to be attributed to divine providence: And ſince God cannot will the cauſe,

but he muſt alſo will the neceſſary effect or conſequence, what government ſoever is in the neceſſary direction of the balance, the ſame is of divine right. Wherefore, tho' of the Iſraelites God ſays, *They have ſet up kings, but not by me; they have made princes, and I knew it not.* Yet to the ſmall countries adjoining to the Aſſyrian empire, he ſays, " *Now have I given all theſe lands into the hands of the king of Babylon my ſervant.——Serve the king of Babylon and live.*" The general truth here inſiſted upon, which hiſtory abundantly confirms, is, that the over balance of property begets dominion, and that the balance of dominion will always follow the balance of property, be under its direction, or vary as it varies. And therefore this author ſays very juſtly (of his works, p. 70.) To erect a monarchy, be it ever ſo new, unleſs like *Leviathan*, you can hang it, as the country fellow ſpeaks, by geometry; (for what elſe is it to ſay that any other man muſt give up his will to the will of this one man without any other foundation?) it muſt ſtand upon old principles, that is, upon a nobility, or an army planted in a due balance of dominion. " Aut viam inveniam aut faciam," was an adage of Cæſar; and there is no ſtanding for a monarchy, unleſs it finds this balance, or makes it. If it finds it, the work is done to its hand; for where there is inequality of eſtates, there muſt be inequality of power; and where there is inequality of power, there can be no commonwealth. To make it, the ſword, muſt extirpate out of dominion all other roots of power, and plant an army upon that ground. An army may be planted nationally or provincially. To plant it nationally, it muſt be either monarchically in part, as the Roman Beneficiarii; or monarchically in the whole, as the Turkiſh tenants; or ariſtocratically, that is, by earls and barons, as the Neuſtrians were planted by Turbo; or democratically, that is, by equal lots, as the Iſraelitiſh army in the land of Canaan by Joſhua. In every one of theſe ways, there muſt not only be confiſcations, but confiſcations to ſuch a proportion as may anſwer to the work intended.

5. As nothing elſe can fix government but an *Agrarian* ſuitable to its nature; ſo different ſuperſtructures are natural to different foundations of government. Thus, ſuch ſuperſtructures as are natural to an abſolute prince, or the ſole landlord of a large territory, require for the firſt ſtory of the building, that what demeſnes he ſhall think fit to reſerve being ſet apart, the reſt be divided into horſe quarters or military farms for life, or at will, and not otherwiſe; and that every tenant for every hundred pounds a year ſo held, be, by condition of his tenure, obliged to attend his ſovereign lord in perſon, in arms, and at his proper coſt and charges, with one horſe, ſo often, and ſo long as he ſhall be commanded upon ſervice. Theſe, among the Turks, are called *Timariots.* The ſecond ſtory requires, that theſe horſe-quarters, or military farms, be divided by con-

venient precincts or proportions into diſtinct provinces, and that each province have one commander in chief of the ſame, at the will and pleaſure of the Grand Signior, or for three years, and no longer. Such, among the Turks, (unleſs by additional honours, they be called *Baſhaws* or *Viziers*) are the *Beglerbegs*. For the third ſtory, there muſt of neceſſity be a mercenary army, conſiſting both of horſe and foot, for the guard of the prince's perſon, and for the guard of his empire, by keeping the governors of provinces ſo divided, that they be not ſuffered to lay their arms or heads together, or to hold intelligence with one another; which mercenary army ought not to be conſtituted of ſuch as have already contracted ſome other intereſt, but to conſiſt of men ſo educated from their very childhood, as not to know that they have any other parent or native country, than the prince and his empire. Such, among the Turks, are the foot, called *Janizaries*, and the horſe, called *Spahys*. The prince, accommodated with a privy council, conſiſting of ſuch as have been governors of provinces, is the topſtone. This council, among the Turks, is called *the Divan*, and this prince, *the Grand Signior*.

The ſuperſtructures proper to a regulated monarchy, or to the government of a prince, (three or four hundred of whoſe nobility, or of whoſe nobility and clergy hold three parts in four of the territory) muſt either be by perſonal influence, upon the balance, or by virtue of orders. The ſafer way of this government is by orders; and the orders proper to it, eſpecially conſiſt of an hereditary ſenate of the nobility, admitting alſo of the clergy, and of a repreſentative of the people, made up of the Lord's menial ſervants, or ſuch as by tenure, and for livelihood, have immediate dependance upon them.

An ariſtocracy, or ſtate of nobility, to exclude the people, muſt govern by a king; or to exclude a king, muſt govern by the people. Nor is there, without a ſenate, or mixture of ariſtocracy, any popular government; wherefore, tho', for diſcourſe ſake, politicians ſpeak of pure ariſtocracy and pure democracy, there is no ſuch thing as either of theſe in nature, art, or example: where the people are not over balanced by one man, or by the few, they are not capable of any other ſuperſtructures of government, or of any other juſt and quiet ſettlement whatſoever, than of ſuch only as conſiſts of a ſenate as their counſellors, of themſelves, or their repreſentative, as ſovereign lords, and of a magiſtracy anſwerable to the people as the diſtributers and executioners of the laws made by the people. And thus much is of abſolute neceſſity to any, or every government, that is or can be properly called a commonwealth, whether it be well or ill ordered. But the neceſſary definition of a commonwealth any thing well ordered, is, that it is a government conſiſting of the ſenate propoſing, the people reſolving, and the magiſtracy executing. To ſpeak of different orders

ders in commonwealths, would be almoſt endleſs. Some commonwealths conſiſt of diſtinct ſovereignties, as *Switzerland* and *Holland*; others are collected into one and the ſame ſovereignty, as moſt of the reſt. Again, ſome commonwealths have been upon rotation or courſes in the repreſentative only, as *Iſrael*; others in the magiſtracy only, as *Rome*; ſome in the ſenate and magiſtracy, as *Athens* and *Venice*; others in ſome part of the magiſtracy, and in others not; as *Lacedemon* in the *Ephori*, and not in the kings; and *Venice* not in the *Doge*, nor in the *procuratori*, but in all the reſt. *Holland*, except in the election of ſtates provincial (which is emergent) admits not of any rotations or courſes. But there may be a commonwealth admitting of rotation throughout, as in the ſenate, in the repreſentative, and in the magiſtracy, as that propoſed by Mr. Harrington in his Oceana. Rotation, if it be perfect, is equal election by, and ſucceſſion of the whole people to the magiſtracy by terms and vacations. Equal election may be by lot, as that of the ſenate of Lacedemon; or by ballot, as that of Venice, which of all others is the moſt equal. The ballot, as it is uſed in Venice,, conſiſts of a lot, whence proceeds the right of propoſing, and of an unſeen way of ſuffrage, or of reſolving. From the wonderful variety of parts, and the difference of mixture (before Mr. Harrington ſcarce touched by any) reſult thoſe admirable differences that are in the conſtitution and and genius of popular governments; ſome being for defence, ſome for increaſe; ſome more equal, others more unequal; ſome turbulent and ſeditious, others like ſtreams in a perpetual tranquillity. That which cauſes much ſedition in a commonwealth is inequality, as in Rome, where the ſenate oppreſſed the people. But if a commonwealth be perfectly equal, it is void of ſedition, and has attained to perfection, as being void of all internal cauſes of diſſolution. And hence many antient moral writers, Cicero in particular, have ſaid, that a well conſtituted commonwealth is immortal, *æterna eſt*. An equal commonwealth is a government founded upon a balance, which is perfectly popular, being well fixed by a ſuitable Agrarian, and which, from the balance, through the free ſuffrage of the people given by the ballot, amounts, in the ſuperſtructures, to a ſenate debating and propoſing, a repreſentative of the people reſolving, and a magiſtracy executing; each of theſe three orders being upon courſes or rotation; that is, elected for certain terms injoining like intervals. And to undertake the binding of a prince from invading liberty, and yet not to introduce the whole orders neceſſary to popular government, is to undertake a flat contradiction, or a plain impoſſibility.

6. All I have further to add in this remark, deſigned to ſhew the natural generation and variation of empire is, that theſe principles (as Mr. Harrington has obſerved) were not unknown to ancient politicians, and are ſufficiently confirmed by hiſtory. That they were not unknown to Moſes, is plain from

the hiſtory given us of the orders of the commonwealth inſtituted by him; nor to Lycurgus, is as plain. I ſhall only juſt ſet down the paſſages Mr. Harrington quotes from Ariſtotle and Plutarch. The firſt is Ariſtotle, in theſe words: "Inequality is the ſource of all ſedition, as when the riches of one or a few come to cauſe ſuch an overbalance in dominion, as draws the commonwealth into monarchy or oligarchy; for prevention whereof the *oſtraciſm* has been of uſe in divers places, as at *Argos* and *Athens*. But it were better to provide in the beginning, that there be no ſuch diſeaſe in the commonwealth, than to come afterwards to her cure, Polit. 5. 3." The ſecond is Plutarch, in theſe words: "Lycurgus judging that there ought to be no other inequality among citizens of the ſame commonwealth than what derives from their virtues, divided the land ſo equally among the Lacedemonians, that, on a day beholding the harveſt of their lots lying by cocks or ricks in the field, he laughing ſaid, that it ſeemed to him they were all brothers, Plutarch in Lycurg." This account of the riſe, variation or fixation of empire, is abundantly confirmed by experience or hiſtory. To prove this I ſhall only here inſert a ſmall part of what Mr. Harrington ſays of ſeveral ancient republics, in order to excite the reader's curioſity to have recourſe to himſelf, (of his works, p. 57). "Iſrael and Lacedemon, which commonwealths have great reſemblance, were each of them equal in their Agrarian, and inequal in their Rotation: eſpecially Iſrael, where the Sanhedrim or ſenate firſt elected by the people, took upon them ever after to ſubſtitute their ſucceſſors by ordination. And the election of the judge, ſuffes, or dictator, was irregular, both for the occaſion, the term, and the vacation of that magiſtracy, as you find in the book of Judges, where it is often repeated, That in thoſe days there was no King in Iſrael, that is, no Judge: and in the firſt of Samuel, where Eli judged Iſrael forty years, and Samuel all his life. In Lacedemon, the election of the ſenate being by ſuffrage of the people, tho' for life, was not altogether ſo unequal, yet the hereditary right of kings, were it not for the Agrarian, had ruined her. Athens and Rome were inequal as to their Agrarian, that of Athens being infirm, and this of Rome none at all; for if it were more anciently carried, it was never obſerved. Whence, by the time of Tiberius Gracchus, the nobility had almoſt eaten the people quite out of their lands, which they held in the occupation of tenants and ſervants: whereupon, the remedy being too late, and too vehemently applied, that commonwealth was ruined. Theſe alſo were unequal in their rotation, but in a contrary manner. Athens, in regard that the ſenate (choſen at once by lot, not by ſuffrage, and changed every year, not in part, but in the whole) conſiſted not of the natural ariſtocracy; nor ſitting long enough to underſtand or be perfect in their office, had no ſufficient authority to reſtrain the people from that perpetual turbulence in the end, which was their ruin, notwithſtanding the efforts of *Nicias*, who did all a man could do to help it. But as Athens fell by the headineſs of the people, ſo Rome fell by the ambition of the nobility, through the want of an equal rotation; which, if the people had got into the ſenate, and timely into the magiſtracy (whereof the former was always uſurped by the patricians, and the latter for the moſt part) they had both carried and held their Agrarian, and that had rendered that commonwealth immoveable."

This ſhort ſpecimen of our Author's way of reaſoning about the riſe and fall, or variations of civil government, is ſufficient to ſhew, that he reaſons from natural cauſes in theſe matters, as natural philoſophers do about phenomena commonly called natural ones. And indeed every thing in nature, moral or corporeal nature, muſt have its natural courſe, its natural riſe, progreſs and variations. And as to know the one is to be a natural philoſopher, ſo to know the other is to be a moral philoſopher or politician.

CHAP. VII.

Of ſovereignty, and the ways of acquiring it.

Sect. CXXVII.

All ſovereignty is ſupreme and abſolute.

SInce thoſe who unite into a civil ſtate lived before that in a ſtate of nature (§ 3), which is a ſtate of equality and liberty (§ 5 and 6); the conſequence is, that a civil ſtate is ſubjected to no perſon or perſons without it; may not be hindered or diſturbed in doing any thing it judges neceſſary for its conſervation, but may freely exerce all its rights, and cannot be forced to give an account to any of its tranſactions. But all thoſe things together conſtitute what is called *ſupreme* or *abſolute ſovereignty* or *empire*; and therefore, in every civil ſtate, there is ſupreme and abſolute empire or ſovereignty *.

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* We are now ſpeaking of a republic properly ſo called, which we defined to be a multitude of people united together under a common head for their ſecurity, and independent of all others (§ 103). And therefore, a people conquered and brought under power by a conqueror, is

not a republic, but a *province*, becauſe ſubjected to others. For the ſame reaſon, a multitude of people, united indeed under a common magiſtracy, but ſubjected to a larger kingdom or republic, does not properly come under the appellation of a *republic*, but of a *town-corporate*: Wherefore the civilians frequently call ſuch towns-corporate *republics*, and thus make mention of the republic of Antioch, l. 37. D. de reb. auct. jud. poſſid. of the republic of the Heliopolitani, l. 4. C. qui pot. in pign. of the Tuſculans, l. 38. § 5. D. de legat. of the Sebaſtiani, l. 21. § 3. D. de ann. leg. of the Arelatenſes, l. 34. D. de uſu & uſufruct. leg. of the Sardiani, l. 24. D. de ann. legat. yet when they ſpeak more accurately, they deny thoſe to be abſent on account of the republic, who are ſent upon a commiſſion by a city, l. 26. § ult, D. in quibus cauſſ. mai. It is therefore of conſequence how we uſe the word *republic*.

Sect. CXXVIII.

The error of monarch-killers.

Becauſe there is ſupreme empire or abſolute ſovereignty in every civil ſtate or republic (§ 128), and citizens or ſubjects may have ſubmitted their will either to one, or many, or to the whole people, (§ 114); the conſequence is, that to whomſoever they have ſubmitted their will, he, or they are veſted with ſupreme power or ſovereignty, and therefore they can be judged by none but God alone; and much leſs therefore can they be puniſhed in any manner by the people; ſo that the doctrine of monarch-killers, which makes the people ſuperior to the king or prince, and places in the former the real, and in the latter only perſonal majeſty, is a moſt petulant one *.

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* This is the doctrine of Franc. Hotoman. Stephen Junius Brutus, (under which fictitious name ſome think Hub. Languetus, others think Buchanan lurked) Sidney, Althuſius, Pareus, Jo. Milton, and others, of which authors ſee beſides the obſerv. Halenſes, 6. 1. Jo. Franc. Budd. hiſt. juris naturæ & gentium, § 52: But the fundamental error by which they are miſled into allowing power and authority over kings, lies in their making the

conſtituent ſuperior to the conſtituted; for that principle being preſuppoſed, the people which conſtitutes their prince or head (111), muſt be ſuperior to the prince or head conſtituted by them. Now this doctrine is no leſs abſurd than it would be to ſay, that a ſervant who hath voluntarily ſubjected himſelf to a maſter (§ 78), is ſuperior to his maſter, becauſe he conſtituted him ſuch. See Grotius of the rights of war and peace, 1. 3. 8. Zach. Huber. diſſ. l. 2. p. 124. Reaſon rather tells us, that he cannot be ſuperior who hath ſubjected himſelf to another's will, having thus renounced his own will. And therefore, ſince a people does ſo when they unite into a republic (§ 128), with what front can they call themſelves ſuperior to their ſovereign?

Sect. CXXIX.

As likewiſe of the machiavelians.

But ſince ſubjects have only ſo far ſubjected themſelves to the will of a ſovereign as their common ſecurity, the end for which they entred into the civil ſtate, requires (§ 14 & 106), we muſt infer from hence, that they are abominable and flagitious flatterers of ſovereigns, who perſuade them that they may do what they pleaſe, and can do no injury to their ſubjects; but that their perſons, lives, reputations and eſtates, are ſo abſolutely dependent upon them, that ſubjects have no more left to them but the glory of abſolute ſubmiſſion and obedience. From this corrupt ſpring flow all thoſe peſtiferous tenets, which Machiavel and Hobbes have attempted to impoſe upon mankind with the greateſt aſſurance; and, together with them, all the aſſerters and defenders of paſſive-obedience in Great-Britain. But who will deny that ſuch doctrines are no leſs peſtilential than that of *king-killing* *?

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* The tenets of Machiavel and Hobbes are well known. Nor is the controverſy ſo warmly agitated between the authors of books intitled, *Julianus* and *Jovinianus*, and other learned men in Great Britain, leſs notorious. Grotius of the rights of war and peace, 1. 3. 8. is thought by not a few, to have given ſome handle to this doctrine of

paſſive-obedience and non-reſiſtance. But whether a people is ſubdued by force, or conſents voluntarily to their ſubjection, it is unlawful, highly criminal for a prince to injure his people, or oppreſs them in a hoſtile manner. For in the firſt caſe, the people laid aſide their hoſtile diſpoſition, when they ſurrendered or gave themſelves up. And in the latter caſe, the prince has no power but what was transferred to him by the people, which none will ſay was a power to maletreat them like ſlaves. That paſſage, 1 Sam. viii. 11. gives no authority to ſuch abuſe; for whether we underſtand the *jus regis* there mentioned to be a narrative of fact and cuſtom, as *jus latronis* is uſed, l. 5. D. ad leg. Pomp. de parricid. or of the *dominium eminens*, as the Jewiſh doctors interpret it, and with them Thomaſius ad Huber. de jure civit. 1. 2. 7. 13. p. 58. or of *jus*, right, ſo far obligatory that it may not be reſiſted, as *jus* is uſed by Paullus, l. 11. de juſt. & jure, and as V. A. Zach. Huber explains this place, ibid. p. 237, it cannot be proved fom thence, that ſovereigns have any ſuch right as Machiavel and Hobbes, and their diſciples, a *ſlaviſh race*, have dared to attribute to them. Surely a good prince will never arrogate ſuch power to himſelf,

Qualis apud veteres divus regnabat Ulyſſes,
Qui nulli civi dicto factove nocebat.
Scilicet hac hominem Dis immortalibus æquat.

Sect. CXXX.

Sovereigns are ſacred.

Since ſovereigns cannot be judged by any but God, much leſs be puniſhed by their people (§ 128); hence we conclude that ſovereignty is ſacred, and that Sovereigns are ſacred; and therefore that ſedition and rebellion are very heinous crimes. Tho' we ſhould grant in theory, that Sovereigns who manifeſt a hoſtile diſpoſition againſt their ſubjects, may be reſiſted as tyrants; yet this rule would be in fact of no utility, becauſe Sovereigns can only be judged by God, and therefore God alone can decide whether a Sovereign truly bears a hoſtile mind againſt his ſubjects or not *.

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* Thomaſ. ad Huber. de jure civ. 1. 9. 2. 20. p. 316. hath treated largely on this ſubject. The example of

Henry IV. Emperor, if it be carefully attended to, will ſufficiently convince any one how dangerous it is to allow the people a right of judging of this matter. He was a moſt brave prince, and his only deſign was to recover to himſelf the rights of empire and ſovereignty, extorted from him in his minority. The clergy, to whom that was imputed, were chafed; and it was eaſy to them to miſrepreſent and traduce a young headſtrong prince, zealous of his rights, as an enemy to the church and ſtate, not only to the populace, but even to the princes of the empire called ſecular, nay, and to Pope Gregory; and thus ſo to diſpoſe things, that an excellent prince, tho' he had an army that was for the moſt part victorious, was ſtrip'd by his own ſon of his kingdom and all his wealth, as an enemy to the church and ſtate. So perilous is it to allow not only the populace, but even the nobles, to judge of the actions of princes.

Sect. CXXXI.

But yet it is not lawful to ſovereigns to do whatever they pleaſe.

But ſince every thing is not lawful to a prince (§129) the conſequence is, that he cannot impoſe any violence or reſtraint upon the conſciences of his ſubjects, nor command them to do any thing contrary to the will of God the ſupreme lawgiver (l. 1. § 87); neither can he, without a pregnant and juſt reaſon, deprive any ſubject of his right, ſeeing ſubjects united into a civil ſtate chiefly for the ſecurity of their rights (§ 105). Subjects therefore, in great diſtreſs, may try all methods in order to obtain their rights, and, in extreme danger, leave their native country (§ 21); but they may not take up arms againſt their prince or the republic (l. 1. § 232).

[I cannot go further without obſerving, that it is ſurprizing to find ſo diſtinct and clear an author, after he had laid down principles that lead, as it were, by the hand, to the true concluſion about the rights of ſubjects, giving and taking in ſuch a manner upon this ſubject, that one cannot tell what he would be at. But Grotius, Pufendorff, and all the writers of ſyſtems of the laws of nature and nations, treat this important queſtion in the ſame manner. I ſhall not ſtay here to obſerve, that our Author runs into the common miſtake about Machiavel's doctrine; ſo unaccountably are that excellent politician's writings miſunderſtood. Our Harrington, tho' he differs from him in ſeveral points, has done juſtice to him, and ſhewn him to be a friend to liberty, and to have underſtood the true principles of politics better than moſt writers on the ſubject. But let me take notice, that the excellence of our conſtitution appears from this, that our country has produced the beſt treatiſes on government: In this matter we have left all other countries far behind. Mr. Barbeyrac, in his notes on the chapters of Grotius and Pufendorff relative to government, has done us juſtice in this point, and indeed in every thing. He hath ſet his Authors right in this matter by the help of our Sidney, Locke and others. And no where is this ſubject more fully and accurately handled than in an excellent treatiſe upon the meaſures of ſubmiſſion, publiſhed at a very ſeaſonable time, by an inimitable defender of the rights and liberties of mankind (Dr. Hoadley Biſhop of Wincheſter) whoſe name will be precious in our country, while the value of our conſtitution is known, and we preſerve a juſt ſenſe of the beſt privileges men can enjoy, or God beſtow; privileges we cannot part with without the greateſt of crimes, becauſe we cannot give them up, without degrading ourſelves into a ſtate far below that for which God deſigned men, by making them rational and free agents. Our Author lays a mighty ſtreſs upon this maxim, That the inferior cannot call the ſuperior to account. But is there any abſurdity in our excellent Hooker's diſtinction between *ſingulis major* and *univerſis minor*? I am to return to this momentous queſtion afterwards. But what an odd jumble is our Author's doctrine upon this article, when all he ſays is brought together? It amounts briefly to this: "A prince has no right to injure his ſubjects: It is unlawful or criminal in him to do it; and they are baſe flatterers who tell princes they may do what they pleaſe; but God alone can judge when they do injure their ſubjects; the people hath no right to judge of the matter; and if they ſhould, in extreme miſery, feel they are injured, all they, who may do every thing in that caſe to recover their rights, have a right to do, is to leave their dear native country." Who would have expected to have found our Author talking any where in ſuch a manner? Let us oppoſe to this a few things, firſt from Mr. Sidney. "They who create magiſtracies,

giſtracies, and give to them ſuch nature, form and power as they think fit, do only know whether the end for which they were created be performed or not. They who give a being to the power which had none, can only judge whether it be employed to their welfare, or turned to their ruin. They do not ſet up one, or a few men, that they and their poſterity may live in ſplendor and greatneſs; but that juſtice may be adminiſtred, virtue eſtabliſhed, and proviſion made for the public ſafety. No wiſe man will think this can be done, if thoſe who ſet themſelves to overthrow the law are to be their own judges. If Caligula, Nero, Vitellius, Domitian, or Heliogabulus had been ſubject to no other judgment, they would have compleated the deſtruction of the empire. If the diſputes between Durſtus, Evenus III. Dardanus, and other Kings of Scotland, with the nobility and people, might have been determined by themſelves, they had eſcaped the puniſhments they ſuffered, and ruined the nation, as they deſigned. Other methods were taken; they periſhed by their madneſs; better princes were brought into their places, and their ſucceſſors were by their example admoniſhed to avoid the ways that had proved fatal to them. If Edward II. of England, with Gaveſton and the Spencers, Richard II. with Treſilian and Vere, had been permitted to be judges of their own caſes, they who had murdered the beſt of the nobility would have purſued their deſigns to the deſtruction of ſuch as remained, the enſlaving of the nation, the ſubverſion of the conſtitution and the eſtabliſhment of a mere tyranny, in the place of a mixed monarchy. But our anceſtors took better meaſures. They who had felt the ſmart of the vices and follies of their princes, knew what remedies were moſt fit to be applied, as well as the beſt time of applying them. They found the effects of extreme corruption in government, to be ſo deſperately pernicious, that nations muſt neceſſarily ſuffer, unleſs it be corrected, and the ſtate reduced to its firſt principle, or altered. Which being the caſe, it was as eaſy for them to judge whether the governor, who had introduced that corruption, ſhould be brought to order, or removed, if he would not be reclaimed, or whether he ſhould be ſuffered to ruin them and their poſterity; as it is for me to judge whether I ſhould put away my ſervant, if I knew he intended to poiſon or murder me, and had a certain facility of accompliſhing his deſign; or whether I ſhould continue him in my ſervice till he had performed it. Nay, the matter is ſo much the more plain on the ſide of the nation, as the diſproportion of merit between a whole people and one or a few men entruſted with the power of governing them is greater than between a private man and his ſervant." Diſcourſe upon government, chap. 3. § 41. The ſame author, chap. 3. § 36. obſerves, " Neither are ſubjects bound to ſtay till the prince has entirely finiſhed the chains which he is preparing for them, and has put it out of their power to oppoſe. 'Tis ſufficient, that all the advances which he makes are manifeſtly tending to their oppreſſion, that he is marching boldly on to the ruin of the ſtate."

The ſecond is from Mr. Locke on government, chap. 18. § 209. It is as impoſſible for a governor, if he really means the good of the people, and the preſervation of them and the laws together, not to make them ſee and feel it; as it is for the father of a family not to let his children ſee he loves and takes care of them (§ 210). How can a man any more hinder himſelf from believing in his own mind which way things are going, or from caſting about how to ſave himſelf, than he could from believing the captain of the ſhip he was in was carrying him and the reſt of his company to *Algiers*, when he found him always ſteering that courſe, tho' croſs winds, leaks in his ſhip, and want of men and proviſions, did often force him to turn his courſe another way for ſome time, which he ſteadily returned to again, as ſoon as the winds, weather, and other circumſtances would let him. *But it will be ſaid, this hypotheſis lays a ferment for frequent rebellion. No more,* ſays Mr. *Locke, than any other hypotheſis.* " 1. For when the people are made miſerable, and find themſelves expoſed to the ill uſage of arbitrary power, cry up their governors as much as you will for *ſons of Jupiter*, let them be ſacred and divine, deſcended or authorized from heaven; give them out for whom or what you pleaſe, the ſame will happen. The people, generally ill-treated, and contrary to right, will be ready, upon any occaſion, to eaſe themſelves of a burden that ſits heavy upon them. 2. Such revolutions happen not upon every little miſmanagement in public affairs. Great miſtakes in the ruling part, many wrong and inconvenient laws, and all the ſlips of human frailty, will be born by the people without mutiny and murmur. 3. This power in the people of providing for their ſafety anew by a new legiſlative, when their legiſlators have acted contrary to their truſt, by invading their property, is the beſt fence againſt rebellion, and the moſt probable means to hinder it. For rebellion being an oppoſition, not to perſons, but authority, which is founded only in the laws and conſtitutions of the government; thoſe, whoever they be, who, by force, break through, and, by force, juſtify the violation of them, are truly and properly rebels. *The principle upon which all this depends is ſelf-evident, and clearly ſet forth by the ſame author, book* 2. *cap*. 4. " No man can ſo far part with his liberty, as to give himſelf up wholly to an arbitrary power, to be treated abſolutely as that power thinks proper: for this would be to diſpoſe of his own life, of which he is not maſter. Much leſs has a whole people ſuch a right, as every one of thoſe who compoſe it, is intirely deſtitute of. The natural liberty of man is to be free from any ſuperior power on earth, and not to be under the will or legiſlative authority of man, but to have only the law of nature for his rule. The liberty of man in ſociety, is to be under no other legiſlative power, but that eſtabliſhed by conſent in the common-wealth; nor under the dominion of any will, or reſtraint of any law, but what the legiſlative ſhall exact according to the truſt put in it;——as freedom of nature is to be under no other reſtraint but the law of nature. This freedom from abſolute arbitrary power is ſo neceſſary to, and cloſely joined with a man's preſervation, that he cannot part with it, but by what forfeits his life and preſervation together."

The third is from Dr. Hoadley's meaſures of ſubmiſſion, (the defence) p. 70. " Suppoſing ſome ſhould apply this doctrine, which only concerns the worſt of governors to the beſt, and oppoſe good princes, under pretence that it is lawful to oppoſe tyrants and oppreſſors, this cannot affect the truth of the doctrine; nor doth the doctrine in the leaſt juſtify or excuſe them, but rather condemns them. Our bleſſed Lord hath laid down a very reaſonable permiſſion in his goſpel, that husbands may put away their wives in caſe of adultery, and marry others; and is this ever the leſs reaſonable, becauſe wicked men, under the cover of this, may put away the moſt virtuous wives, and take others merely for the gratification of their preſent inclinations? Or doth this permiſſion of our Lord's juſtify all pieces of wickedneſs that may be acted under the pretext of it? It is certainly true, that magiſtrates may, and ought to puniſh and diſcourage evil men, and diſturbers of human ſociety: And is this ever the leſs true, becauſe ſome magiſtrates may, under the pretence of this, puniſh and afflict the beſt and moſt peaceable ſubjects? It is certainly true that a child may reſiſt a father, if he ſhould attempt to take away his life: And is this ever the leſs true, becauſe a child may, through miſtake, pretend againſt a good father, that he hath deſigns againſt his life, and, under that pretence, diſhonour and reſiſt him? It is agreed upon on all hands, as a good general rule, that men ought to follow the dictates of their conſciences: But ſurely this rule is not made falſe; nor can it be ſuppoſed to juſtify a man, if he ſhould be ſo void of underſtanding, as to be directed by his conſcience to murder his parent or his prince, as a point of indiſpenſable duty."

In this excellent treatiſe, all the objections againſt the doctrine of liberty, and all the monſtrous abſurdities of the oppoſite doctrine of paſſive-obedience and non-reſiſtance are fully handled with uncommon ſtrength and perſpicuity of argumentation. But our author may be refuted in a few words from his own principles. He ſays expreſly, (§ 129 in the ſcholium), that a prince has no right to ſhew a hoſtile diſpoſition, or to injure even a ſubdued people, *Nefas eſt principi*, &c. Now, is not obligation the correlate of right; and have not then a people a right to demand, exact, nay, force (*i. e.* a perfect right, according to his own definition) their prince to treat them uninjuriouſly, that is juſtly. If a prince has no right to injure, he is obliged not to injure; but if he be obliged not to injure, the people whom he is obliged not to injure, hath a right to demand juſt treatment from him, and to keep off injuries, otherwiſe a prince may be under an obligation to a people, and yet the people may acquire no right by that obligation to them. If the law of nature extends to all men, it extends to thoſe veſted with power, as well as to thoſe under power; now, as far as the law of nature extends, the law of juſtice and benevolence, or in one word, the law of love extends; for that is the ſum and ſubſtance of the law of nature. But ſo far as the law of love extends, juſtice is of perfect obligation, and benevolence is of imperfect obligation: Princes therefore, being under the law of nature, are perfectly obliged to juſtice, and imperfectly obliged to benevolence. Now, ſince none (as our Author often ſays) can be under an obligation, without giving ſome right to ſome other; it is plain a prince cannot be under the perfect obligation of juſtice, and the imperfect obligation of benevolence, without giving the people, to whom he is perfectly or imperfectly obliged, a perfect or imperfect right, correſpondent to theſe his different obligations to them. The people therefore muſt have a perfect right to juſtice; that is, according to our Author's definition of perfect right, they muſt have a juſt title to exact, to demand, nay, to force it. There is no avoiding this concluſion from our Author's own principles, but by ſaying what he denies, and never will ſay, "That men are only under the law of nature till they have got ſubjects ſome how or other under their power; and that then power is right, and they are no more under the law of nature." For unleſs this be aſſerted, whether a people be ſubdued, and, to make the beſt of their misfortunes, hath ſurrendered themſelves to their conqueror as their prince; or whether a people voluntarily and freely chooſes to ſubject themſelves to one or many as their governors, it muſt be true that a prince is under perfect obligation to juſtice, in the treatment of his ſubjects; and conſequently, that they have a perfect right to force juſtice from him. No misfortunes can, and far leſs can voluntary conſent deſtroy or annul the law of nature. And therefore the right to juſtice common to all men, can neither be annulled by the ſuperior force of arms, nor given up by voluntary conſent. To ſay that the people, tho' they can judge of the obligations of other men to juſtice by the law of nature, yet cannot, or have not a right to judge of the obligations of their prince to juſtice by the law of nature, is either to ſay, that men in civil government give up not only their underſtandings, but their ſenſes and feeling; or it is to ſay, that tho' they may ſtill ſee, feel and underſtand injuſtice, yet by putting themſelves under a prince, they put him in a ſtate that exeems him from all obligation to juſtice, and conſequently annuls their right to it; which is to ſay, that civil government annuls the law of nature; and which of theſe two is moſt abſurd, is difficult to determine. To ſay the people have in civil government a perfect right to juſtice, and that the princes are by the law of nature perfectly obliged to render juſtice to their ſubjects; and yet that the people have in the caſe of unjuſt treatment by their governors or princes, no right left to them, but that of leaving their dear native country, is to ſay they have a perfect right, the exerciſe of which is unlawful; a perfect right which is no right at all. And to ſay the right of ſubjects to juſtice under civil government, is a perfect right to demand and exact juſtice from their governors, every way but by taking up arms, is to ſpeak of a right not defined by our Author, or any writer on the law of nature and nations, by all of whom, either in our Author's words, or in others equivalent to them, right is divided into perfect and imperfect; and right to juſtice is called perfect right. So that our Author muſt give up his concluſions in the preceding ſections, or he muſt ſay, That civil government being conſtituted, the right of ſubjects to juſtice from their governors, becomes, inſtead of a perfect right, an imperfect one, as the right to benevolence: nay, which is more, he muſt ſay, That, tho' in a ſtate of nature a right to benevolence may become, by the law of neceſſity, a perfect right (as our Author hath often ſaid it may), yet in a ſtate of civil government, the right to juſtice, even in extreme neceſſity, is none at all. For ſure that right becomes none at all, which extends no farther than to the right of tamely leaving one's native country when one cannot have juſtice, but is injuriouſly uſed, which is the whole of the right of ſubjects according to our Author, notwithſtanding the full and perfect obligation of princes to juſtice. We may reaſon thus againſt our Author from his own conceſſions, his own principles. But does it indeed require any proof, that miracles from heaven cannot prove any perſon to have a right to exerce his power over thoſe who are under it, whether by conſent or force, in an injurious, cruel, oppreſſive manner? Miracles from heaven could not prove the doctrine of paſſive-obedience and non-reſiſtance to be a doctrine of God. It is an immoral doctrine, which overturns the law of nature, and deſtroys all moral obligations. Whence could our Author, or any writer on the laws of nature, derive his concluſions, without laying down this fundamental principle, as our Author does, "That God wills the perfection and happineſs of mankind, and gives them a right to make themſelves happy?" But is not this principle given up, the moment it is aſſerted, That under civil oppreſſion and tyranny, becauſe it is the effect of power, ſubmitted to for common preſervation, ſafety and happineſs (the only end of civil ſociety) men muſt put up contentedly with all hardſhips, injuries and abuſes, and no more think of any probable means to make themſelves happy, of any probable means, ſhould I not rather ſay, to reſcue themſelves from miſery into a ſtate ſomewhat congrous to the natural dignity of mankind, and to the only intention, God can be ſuppoſed, without blaſphemy, to have had in view by creating them ſuch as they are made, for religion, virtue, induſtry, ingenuity, ſocial commerce, and all the goods, wiſdom, benevolence, religion, virtue, good government, art and united ſtrength can procure to human ſociety, many of which bleſſings may be attained to in ſome degree in a ſtate of nature; but can never be attained to in any degree under abſolute ſlavery, or deſpotic, injurious, lawleſs tyranny.]

Sect. CXXXII.

What if empire be given with a commiſſory clauſe?

Tho' theſe things be true of Sovereigns in general; yet it may happen, that empire is given to one with certain reſtrictions by pacts, and with a commiſſory article to this effect, that the deed ſhall be null, if the conditions be not fulfilled. Now, in this caſe, no injury is done to Sovereigns, if after they have been frequently admoniſhed, they do not ceaſe to invade the liberty of their ſubjects, and to oppreſs them, the Empire be taken from them. And it is evident, from the nature of pacts, if free-men hinder thoſe from exerciſing rule over them, who aſſume it to themſelves without any juſt title to it, or with whom they have made no pact, no transference of power, no covenant, they cannot be blamed *.

* Hence we ſee, that Brutus and the other conſpirators unjuſtly killed Cæſar *: For tho' he uſurped empire in a free city, and extorted liberty from his fellow-citizens without any juſt cauſe; yet they had acquieſced in it, and renounced their liberty. And indeed ſince Brutus himſelf in Cicero, Epiſt. ad Brutum, 4. durſt not accuſe Antonius of a hoſtile diſpoſition towards the republic, nor when the matter was referred to him, attack him as an enemy; with what right could he murder Cæſar, whom the ſenate and people of Rome were ſo far from looking upon as an enemy, that they had rather ſolemnly ſurren-

dered themſelves to him. Wherefore, that ſaying of Lucan is not agreeable to right reaſon, Pharſal. l. 1. v. 351.

Detrahimus dominos urbi, ſervire paratæ.

For if the whole city deſired a maſter, what right had Cæſar, or any other private citizen, to oppoſe, by a civil war, their falling under domination?

† [I do not ſee how this concluſion follows. But not to enter into ſo trite a diſpute, it is ſufficient to obſerve here, That by the confeſſion of our Author, Grotius, Puſendorff, and every writer on the law of nature, theſe ſtates, kingdoms or republics, which are conſtituted by pact, and with what is called by the civilians *lex commiſſoria*, (a peremptory condition, that in caſe the king act otherwiſe, the ſubjects ſhall not be obliged) have the power of judging when their pact is ſatisfied, and of taking care it be fulfilled. In ſuch ſtates, the ſovereign and the people hold their reſpective rights by the ſame expreſs tenure or charter. But no pact being valid that is contrary to the law of nature, the law of nature really lays this reſtriction upon every pact about government, that the good of the people, or the governed, ſhall be the ſupreme law, and that nothing ſhall be impoſed upon ſubjects repugnant to their good, as much, as if that reſtriction had been expreſly made in the pact, by a commiſſory clauſe. All immoral things are impoſſible things in the language of the doctors of laws and civilians. And therefore a pact by a people, giving power to a prince to act contrary to their happineſs, or to prefer whatever he may fancy to be his private intereſt, to their good, is a pact originally and in itſelf invalid. A pact by a people, giving a prince power to rule over them, otherwiſe than agreeably to the law of nature, that is, the law of juſtice and benevolence, or in one word, the law of love, and binding themſelves to obey his commands, whatever they be, is a pact a people cannot make; it is an impoſſible pact, becauſe an immoral one; and therefore it can never be obligatory, but to make it is a crime; and to ſtand to it, is to continue, nay, to increaſe the guilt. It is a mutual agreement between prince and people, to put the arbitrary will of a prince in the place of the law of nature, the law of God. And if ſuch a pact can be valid, why hath our Author ſo often pronounced all immoral pacts invalid? But if ſuch a pact cannot be valid, then every pact about government, and all

conſent to government, expreſs, tacite, or preſumed, hath, in conſequence of the immutability and eternal obligation of the law of nature, this condition contained unalterably and eſſentially in it, " Provided the government be agreeable to the law of nature, the law of juſtice and benevolence." There is therefore, in all pacts about government, in all conſent to government, this commiſſory article naturally and neceſſarily included, inaſmuch, as it cannot be left out, but muſt be underſtood to be there by the law of nature itſelf, whether it be mentioned or not, its truth, exiſtence, or obligation, being of the law of nature, and therefore univerſal and indiſpenſable.]

Sect. CXXXIII.

Empire exerts itſelf in rights of majeſty. What theſe are?

But ſince all empire is ſupreme and abſolute, (§ 127), the conſequence is, that all the rights are joined with it, without which the end of civil ſociety, *viz.* ſecurity, cannot be obtained; all which united together conſtitute *majeſty*, or *the rights of majeſty*. Now, this ſecurity being two-fold, *internal*, by which the ſubjects are inwardly ſecured one againſt the other, and *external*, by which the ſociety is defended againſt the arms and force of outward enemies; hence it is plain, that the rights of majeſty are of two ſorts; ſome relative to the citizens or ſubjects themſelves, called *immanent*; and others relating to foreigners, called *tranſeunt* *.

* All theſe are confounded by ſeveral writers, who having applied themſelves to the ſtudy of public law, have acted as if it had been their buſineſs, like Plautus's cooks, to mingle and confound the moſt diſtinct rights. Having read in Feud. II. § 6. ſome things concerning regal rights uſually joined with fiefs, they thought them the very ſame with the rights of majeſty, tho' it be of great conſequence whether one exerciſe the rights of regality as a vaſſal, or dependently, as it is commonly termed; or the rights of majeſty as a ſovereign, or independently. Beſides, all the rights belonging to ſovereignty, and which are exerciſed by it, not being recited in that place of the feudal law, they thought, that there the rights which could not be communicated to vaſſals without encroaching upon majeſty were

only treated of; and hence they called them *regalia minora*, to which they oppoſe *regalia majora*, *i. e.* in their opinion, incommunicable ones. Thus ſeveral writers have proceeded, who are ſolidly refuted by Thomaſius ad Huber. de jur. civ. 1. 3. 6. 3. p. 91. & ſeq. But ſince we are not treating here of the rights of patronage and vaſſalage, but of public and univerſal law, it is proper to caution againſt the above diviſion, and to deduce the rights of majeſty and their different kinds from the nature and end of civil ſociety, *i. e.* from the fountain-head, rather than from Henningius, Arniſæus, Regn. Sixtin, and other authors of that claſs.

Sect. CXXXIV.

Of the immanent rights of majeſty.

If the *internal ſecurity* of a ſtate conſiſt in defending the ſubjects againſt violence from one another (§ 133), of neceſſity there muſt be joined with ſovereignty the right of making laws, and of applying theſe to facts or caſes, which we may call *ſupreme juriſdiction*; as likewiſe the right of puniſhing tranſgreſſions of the laws, and of exacting *tributes* and *duties* proportionable to the exigencies of the ſtate; the right of *conſtituting adminiſtrators* and *magiſtrates*; of regulating all that relates to ſacred things, as well as to *commerce*, and the ornament of the ſtate; and, in fine, of watching that the republic ſuffer no wrong or hurt.

Sect. CXXXV.

What the tranſeunt rights of majeſty.

And ſince thoſe who coalited into the ſame republic, likewiſe intended their *common ſecurity* againſt external violence *(§ 133)*; the conſequence is, that from ſoverignty cannot be ſevered the right of making *alliances* and *treaties*, ſending *ambaſſadors*, and making *war* and *peace*; ſince without theſe rights the ſtate could not be preſerved ſafe and ſecure. For without the right of making alliances and treaties, a weaker ſtate would often be a very inequal match for a more potent one; without the right of ſending ambaſſadors, treaties could not be made; and without the right of making war and peace, it would be impoſſible to repel force by force; and therefore the end of ſociety, which is ſecurity, could not be obtained.

Sect. CXXXVI.

Whether they are communicable and diviſible.

Thoſe rights of majeſty flowing directly from the nature and end of ſovereignty, cannot be ſeparated from it without deſtroying that unity of will which is the eſſence of ſociety, and rearing up a republic within a republic (§ 120); yet, becauſe all, or ſeveral forms of government, are ſometimes ſo blended together, that one may check or balance another, (§ 117), it may happen, that all, or the greater part of the rights of majeſty may be exerced, not by one perſon, or by one college, but by many, or by the whole people; and in this caſe, there muſt be an aſſembly, in which the Sovereign exerciſes them according to the judgment of the different orders compoſing it *.

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* The moſt potent and flouriſhing Kingdom of Great Britain is an example of this, in which the prerogative of the King with regard to war and peace, remaining entire and unviolated, neither new laws are made, nor new taxes impoſed, nor any other thing relating to the ſafety and glory of the nation done, but in the ſtates of the Kingdom, called a *Parliament*. Thus likewiſe in Germany, nothing relating to the Empire is decreed but by the common reſolution of the Emperor, Electors, Princes, and other orders of the Empire: And almoſt the ſame is now done in Poland and Sweden, with ſafety to the prerogatives belonging to the moſt auguſt Emperor and theſe moſt potent Kings: which prerogatives are called in Germany *reſervata*. Yea, ſome ſuch thing takes place in particular ſovereignties and republics of the German Empire, as is obſerved by Hertius de legibus conſultat. & judic. in ſpecialibus Imp. Rom. Germ. rebuspubl.

Sect. CXXXVII.

Empire is acquired either by election or by ſucceſſion.

Moreover, becauſe both the form of the government, and the governors themſelves, are elected by the ſame people, who alſo preſcribe fundamental laws to them (§ 110); hence it is evident, that none can acquire empire to himſelf in a civil ſtate without the conſent of the people, or contrary to its fundamental laws. But, according to theſe, empire may either be *elective* or *ſucceſſive*; and this diviſion extends not only to monarchies, but to ariſtocracies and popular governments.

* Thus, when the right of governing is included in a few families, ſecluſive of all the reſt, ſo that they and their deſcendents only have it by right of blood, ariſtocracy in this caſe is *ſucceſſive*. Such are the republics of Venice, Genoa, &c. at this day, as is obſerved by Hertius, Elem. polit. 1. 10. 16. p. 212. On the other hand, if the nobles or ſenators be choſen, either by the people or by the college itſelf, then ariſtocracy is *elective*. See Huber. de jur. civ. 1. 8. 1. 17. p. 292. In like manner, if in a democracy the right of ſuffrage be given to no others but the native citizens, it is in ſome ſort ſucceſſive; but if it may be given likewiſe to ſtrangers, it is in ſome reſpect elective.

Sect. CXXXVIII.

What is juſt with regard to the election of a ſovereign.

Empire is *elective*, when the people in an *interregnum* creates a Sovereign, and transfers the empire to him with his conſent. But, becauſe the people may either exerce this right themſelves in a regular aſſembly, or give this right in perpetuity to certain perſons; the conſequence is, that he who is choſen by the one or the other of thoſe who hath the right of chooſing, ought to be held as Sovereign, provided he accepts of the ſovereignty offered to him, and be qualified according to the fundamental laws of the ſtate to rule and govern; and provided the election be made in the order, and with the ſolemnities required by the public laws, or the cuſtoms of the ſtate *.

* Wherefore, thoſe are not lawful princes who are ſet up by a ſeditious mob, or an army, which hath not the right of election. What confuſion and ruin was brought upon the Roman ſtate in the latter way, we may ſee from the examples of Otho, Vitellius, Veſpaſian, Peſcennius Niger, Clodius Albinus, and Septimius Severus. For which reaſon, Plutarch in his life of Galba, p. 1053, ſpeaking of a time, in which, as Tacitus, hiſt. 1. 4. ſays, this arcanum of empire was divulged, that a prince might be made any where elſe as well as at Rome, "affirms, that the Roman republic was ſhaken and convulſed by commotions like thoſe of the Titans in the fable, the ſovereignty being at that time bandied from one prince to another, by the avarice and licentiouſneſs of the army, who being corrupted by bribes and largeſſes, drove out one Emperor by another, as we do a nail by a nail." See Petri Cunæi, orat. 9. p. 188. It therefore greatly concerns a civil ſtate, in whom the elective power is lodged, to define by clear and fixed laws, the electors and the perſons capable of being elected, and the form and method of chooſing, that it may not ſuffer ſuch violent convulſions.

Sect. CXXXIX.

What is an interregnum in an elective ſtate?

Moreover, it is evident, from the definition of an elective government (§ 138), that in it an *interregnum* happens, that is, a ſtate in which the republic hath no Head or Sovereign, as often as the Sovereign dies or abdicates, or is depoſed by the people; unleſs the people, during the Sovereign's life, and with his conſent, chooſe one who is to ſucceed to him; and that the deſigned ſucceſſor hath no more power or right, during the Sovereign's life, but what is given to him by the people with his conſent, or what the Sovereign himſelf delegates to him, either during his abſence, or when he is hindered by any juſt cauſe from preſiding over the ſtate himſelf *.

* For ſince it is one thing to abrogate ſovereignty from a ſovereign, or diveſt him of it, and another thing to nominate a ſucceſſor to him, the deſigned ſucceſſor can have no right to take poſſeſſion of the ſovereignty, but when the ſovereign is abrogated. Hence we may obſerve, that the Kings of the Romans, who are ſometimes choſen in the Emperor of Germany's life, have no power unleſs the Emperor delegates ſome to them, as we know Charles V. did. The caſe is almoſt the ſame with regard to co-adjutors, as they are called, who while the biſhops or prelates live, have no other right but that of ſucceeding them, when their chairs come to be vacant, as they ſpeak. See Boehmer. jur. eccleſ. proteſt. 3. 6. 23.

Sect. CXL.

Whether the republic ſubſiſts in an interregnum?

But ſince an *interregnum* is a ſtate in which the republic hath not its regular or ordinary Head or Sovereign (§ 139); and yet the people would not have the republic to ceaſe, while it is conſulting about the choice of a new head; the conſequence is, that certain extraordinary magiſtrates ought to preſide in the republic during that interval, by whatever name they may be called, who ought either to be elected by the ſuffrages of the orders in the republic at that time, or which is ſafer and better, be appointed by a public law before hand, making proviſion for the ſecurity and good order of the ſtate on ſuch occaſions; but that their authority ceaſes when a Sovereign is elected, is obvious. However, ſince they ſupply the Sovereign's place for a time, it is ſtrange to find learned men diſputing whether the republic truly ſubſiſts in an interregnum, and what frame it falls into in that ſituation *.

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* Pufendorff, of the law of nature, *&c.* 7. 7. 7. reaſons thus about this matter: " Since the intrinſic perfection of the ſtate, and the actual exiſtence of the ſovereign power, were both owing to the latter compact between the prince and the people, it follows, that the perſon in whom the ſovereignty properly reſided being extinct, the kingdom ſinks into an imperfect form, and is united only by

the firſt antecedent pact, by which we conceive the particular members of the community to have agreed to incorporate in one ſociety; (*of this pact we have treated* § 109) not but that the primitive pact uniting the general body, is during the time of an *interregnum* conſiderably ſtrengthened and aſſiſted by the endearment of a common country, and that kind of relation or affinity which reſults from thence, together with this conſideration, that the fortunes of moſt men are rooted or fixed in that particular ſoil, and the effects of others not eaſily to be tranſported or removed. Tho' we may with Livy, I. 17. call a nation during an *interregnum*, a *ſtate without government*, and, as it were, an army without a general; yet becauſe communities at their firſt meeting, before the ſovereignty hath been conferred either on a ſingle man, or on a council, ſeem to bear the ſemblance of democracies; and further, ſince it is natural that all perſons upon the deceaſe of him, to whom they committed their guidance and ſafety, ſhould take care of themſelves, therefore an *interregnum* hath the appearance of a kind of temporary democracy." This is alſo obſerved by Grotius of the rights of war and peace, I. 3. 7. Hertius follows the opinion of Pufendorff, Elem. prud. civ. I. 12. 14. and alſo Houtuyn. Polit. general. § 100. n. 6. & ſeq. But ſince for the moſt part an interrex is previouſly deſigned, or if not, ſome one or more perſons are elected by the common ſuffrage of all the orders in the ſtate, who for a time preſide over the republic with the ſame power, and ſometimes with larger power than the Sovereign himſelf is veſted with; and exerciſe all the rights of Majeſty, about things at leaſt which do not admit of delay; there is no imaginable reaſon why this conſtitution of a ſtate, tho' temporary, may not be called perfect, and monarchical, if this power be lodged in one hand, duarchical if in two, and ariſtocratical if confided to many, as it were *intercalar* princes.

Sect. CXLI.

Of ſucceſſion in kingdoms where the people hath made no ſettlement with regard to it.

Empire is *ſucceſſive* when by the decree of the people a royal family is elected, one of which is always to have the ſupreme power, while any one of its poſterity is capable of holding it by the public conſtitutions. When ſuch a form of government is agreed upon, either the people determine the manner of ſucceſſion, or left it undefined. In the latter caſe, the people is preſumed to have approved of the common right of ſucceſſion to inteſtates. But, becauſe females are not preſumed to have ſo much prudence as men (§ 44), and becauſe a kingdom might happen to paſs by a woman to a foreigner as dowry, therefore women are not admitted to ſucceſſion but as ſubſidiaries, and failing male-heirs. In fine, ſince unity of will is, as it were, the life and ſoul of a republic *(*§ 114*)*; and this cannot be expected, if two or more have the joint adminiſtration of a monarchical kingdom, or ſhare it between them; the conſequence is, that among many equally near to the laſt king, the firſt-born is juſtly honoured with the prerogative, (l, 1. § 297)*.

* There are ſome who have pronounced females quite unqualified and inhabile to ſucceed to ſovereignty, as Jo. Bodinus, but upon principles of Roman law, which do not bind free nations. And ſince even in the Jewiſh ſtate, Deborah executed the office of a judge with great honour, and the annals of almoſt all nations celebrate Queens who acquired immortal glory to themſelves by their prudent government and great actions; who will declare women unworthy of reigning? However, ſince nature hath generally given a pre-eminence to men above women, it is not abſurd to ſay, that they ought only to be called to ſucceſſion as ſubſidiaries. So Ariſtotle, Polit. 1. 3. " A man is more fit by nature to reign than a woman, unleſs ſhe hath ſome qualities very uncommon to her ſex."

Sect. CXLII.

What when the people hath ſettled it.

When the people hath ſettled and fixed the order of ſucceſſion, it is plain that this rule ought to be adhered to (§ 111), and whether the French conſtitution take place, by which females are excluded; or the Caſtilian, which doth not exclude the women, but poſtpones them to the men, and runs back to the female again, in caſe the males, who were ſuperior or equal to them in other reſpects, ſhall happen to fail, together with their iſſue; (*i. e.* in the ſame degree of the ſame line, the younger males are preferred to the elder females; yet ſo as that no tranſition is made from one line to another on the bare obſtacle of the ſex); or whether greater regard be had to the line, or to the neareſt degree of kindred; or whether there be any new or unuſual method of ſucceſſion fixed by the public law, that rule, whatever it be, ought to be obſerved as a ſacred, as a fundamental conſtitution; whence, moreover, we conclude, that a people may give their Sovereign the power of appointing his ſucceſſor, and may interpoſe when diſputes ariſe about the right of ſucceſſion; tho' experience teaches us, that (to uſe the words of Ennius) in ſuch a difficult ſituation, "Non in jure manum conſeri, ſed mage rem ferro agi;" it is not right, but the ſword that decides *.

Sect. CXLIII.

Ordinary and extraordinary interregnum.

Since in elective government a ſingle perſon only is choſen (§ 138), but in *ſucceſſive* governments a royal family is elected (§ 141); becauſe, in the firſt caſe, the right expires with the perſon elected; whereas, in the latter, it ſubſiſts while the royal family ſubſiſts; the conſequence is, that in the firſt caſe there is an ordinary interregnum upon the deceaſe of the elected perſon; in the latter, there is an extraordinary interregnum, when the royal family is extinct; and then it falls into the power of the people to confer the regal honour upon any family they pleaſe, and to continue the ſame kind of government and order of ſucceſſion, or to confine both within more narrow limits, as they ſhall think fit *.

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* Many examples are brought by Puſendorff of the law of nature, *&c.* 7. 7. 14. But the moſt regular way is the lineal, in which the firſt-born male, and his firſt-born male ſucceed, while any one of the line remains; and this line being extinct, the firſt-born of the next line comes in, and ſo on while there is any one ſubſiſting of the firſt Sovereign's poſterity. We know it was formerly diſputed whether the firſt-born, tho' born before his father came to the throne, or the firſt-born after he began to reign, had the right of primogeniture. But ſince in the right of primogeniture, regard is had to the order of birth only, there is no reaſon why a younger brother ſhould be preferred to his elder, merely becauſe the court heard the former ſquaul in a purple cradle.

* We have an example of this in the French hiſtory. See Glab. Radulph. Hiſt. 2. 1. and Aimon de geſt. Francorum, ann. 987. " Convenientes totius regni primates Hugonem, Ducem Pariſienſem, in regem ungi fecerunt." And in Ruſſia, when after various commotions, they choſe a new royal family, from which came Alexius, John, two Peters, and Ann. For that Catharine the Empreſs did not ſucceed by right of ſucceſſion, but by the laſt will of Peter I. every one knows.

Sect. CXLIV.

How empire is acquired by force.

Thoſe are the ways of acquiring empire when a people conſtitutes its own Sovereign; but it is often acquired by arms and force; in which caſe alſo, a conquered people, tho' forced, does yet, without all doubt, conſent to that ſovereignty under which they are brought; and whether the conqueror promiſes to govern them according to their former laws, or ſtipulates to himſelf and his ſucceſſors new terms and larger power, or remits to the conquered people ſome things which their former princes arrogated to themſelves, that rule muſt be the rule to their poſterity *.

* Hence Grotius, of the rights of war and peace, ſays juſtly, 3. 8. 1. 3. " Empire may be acquired by victory, either as it ſubſiſts in a King or Sovereign, and then it is ſucceeded to juſt as it is, and no more power is acquired; or as it ſubſiſts in the people, and then the conqueror acquires it in ſuch a manner that he can alienate it, as the people might have done." But what he ſays of alienation,

deſerves a more accurate inſpection. We ſay then, that a conqueror either waged war with a King only, or with the people themſelves. In the firſt caſe he ſucceeds to the rights of the conquered prince, and ought to change nothing in the form of government, as, *e.g.* William Prince of Orange, the War with James being ended, made no change in the Britiſh government: But in the latter caſe, he has a right to tranſact with the conquered people, and it depends on his will to reduce the conquered ſtate into a province, as the Romans for the moſt part did; to impoſe a harder yoke upon them; or to give a ſpecimen of his clemency, and remit ſome things to them. Thus Alexander, at firſt a moſt merciful conqueror, having made himſelf maſter of the Sidonian Kingdom, made no change in the form of their government, but reſtored it to Abdolominus, Q. Curt. 4. 1. The Turks, on the other hand, having conquered the Byzantine Empire, by the right of victory, impoſed upon them much ſeverer conditions, being of the opinion of Arioviſtus in Cæſar, de bello Gallico, "That by the right of conqueſt, the conqueror may command the conquered as he pleaſes. In fine, Ageſilaus, according to Xenophon de Ageſilao Rege, cap. 1. § 22. "Whatever ſtates he ſubdued, he exeemed them from thoſe things to which ſlaves are obliged by their maſters, and only commanded thoſe things in which freemen obey their magiſtrates." But that indeed rarely happens, and much more rarely ſtill what Juſtin hiſt. 1. 1. ſays of the times before Ninus, "That thoſe who made war fought for glory, and ſatisfied with victory, did not affect empire."

Sect. CXLV.

The diviſion of kingdoms into patrimonial and uſufructuary.

Wherefore all the ways of acquiring empire depend upon the conſent of a people either voluntary, or forced and extorted either by a juſt or unjuſt cauſe. And therefore we think there is very little foundation for the diſtinction between *patrimonial* and *uſufructuary empire.* For tho' Grotius firſt invented that diſtinction (of the rights of war and peace, 2. 6. 3. & 1. 3. 12.) and hath been followed in it by a numerous tribe of learned writers; yet this whole doctrine is loaded with ſo many difficulties, that we cannot tell what kingdoms may be called patrimonial,

monial, and what uſufructuary. See Thomaſ. ad Huber. de jur. civ. 1. 3. 2. 15. p. 69. & ſeq.

Sect. CXLVI.

Whether this diviſion be juſt?

Grotius thinks ſome kingdoms are ſo much under the dominion of their Sovereigns, that they may be alienated by them either in their life, or in the proſpect of death; and theſe he calls *patrimonial*. And that others are ſuch, that their Sovereigns cannot alienate them, which he calls *uſufructuary ones*; tho' Thomaſius juriſprud. divin. 3. 6. 135. thinks they may be more properly called *fideicommiſſory* or *truſts*. But, 1. Since patrimonial things are no longer common (l. 1. § 235) and therefore not public, becauſe that ſuppoſes at leaſt private communion (l. 1. § 237), it is plain that a kingdom ceaſes to be a republic, and degerates into a family (§ 89), if it be in the dominion or patrimony of one. Beſides, 2. Since all civil ſtates are conſtituted, not for the ſake of the Sovereign, but for common ſecurity (§ 105); for that reaſon, a kingdom cannot be patrimonial, without ceaſing to be a civil ſtate. See a diſſertation of the illuſtrious preſident of this province, Jo. Gothofredi de Cocceiis, de teſtamentis principum, part 2. § 16. & ſeq. *.

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* A patrimonial kingdom implies a contradiction, becauſe a kingdom is a ſpecies of a civil ſtate (§ 115); but a patrimonial kingdom is a thing under private dominion. And indeed the whole reaſoning about this matter commonly runs in a circle. For, if you aſk whether a prince has the right of alienating his Sovereignty or not? The anſwer is, That there is a great difference between patrimonial and uſufructuary kingdoms. But if you inſiſt, and enquire what is the difference between theſe two? they tell us, that by the former is meant a kingdom that can be alienated by its ſovereign, and by the other, one that cannot: So that they have as yet given us no certain mark by which the one may be diſtinguiſhed from the other.

For nothing hinders why deſpotic kingdoms, or kingdoms acquired by war, may not be unalienable, as Huber has juſtly obſerved, de jure civ. 1. 3. 2. 18.

Sect. CXLVII.

The alienation of kingdoms without the conſent of the people is unlawful.

Hence we think it may be juſtly concluded, that no Sovereign can ſell, give, barter, divide, leave by laſt-will to any one his kingdom, or transfer it in any of thoſe ways, one can diſpoſe of his patrimony in his life, or in view of death to others, unleſs the people conſent, or have given him expreſly the power of alienating his ſovereignty or diſpoſing of it *.

* Nor do the examples brought by Grotius, Puſendorff, and others, prove any thing. For tho' we read that ſome have divided their kingdoms, and that others have diſpoſed of them in their laſt wills; yet the juſtice of ſuch alienations muſt be determined, not from what has been done, but from the principles of right reaſon. And therefore the illuſtrious Baron de Cocceiis, gives a proper anſwer to all theſe arguments, when he ſays, de teſtament. principum part 2. § 17. " Either theſe alienations had no effect, or they were done with the conſent of the people, either tacite or expreſs ; or it was force that prevailed."

REMARKS on this Chapter.

It will be eaſy to determine what the law of nature preſcribes in other caſes, if we can determine what it preſcribes with reſpect to the exerciſe of the abſolute empire, which is the effect of, and rooted by an overbalance in property. We have already taken notice of the natural cauſes of Empire, to which, if moral writers had attended, they would not have debated ſo much about the origine of civil government or Empire. If one man, it hath been ſaid, be ſole land-lord, or over-balance the many in property to a certain proportion, he will be ſole monarch. But now, how ought ſuch a land-lord, and abſolute maſter, to exerciſe his dominion or empire? What rules does the law of nature preſcribe to him ? Doth it not preſcribe to him theſe very immutable, univerſal laws of juſtice and benevolence, which have been already explained ? In general, therefore, may we not anſwer, that ſuch a maſter is under perfect obligation to exerciſe juſtice towards his ſubjects or ſervants, let them be called which you will, and under imperfect obligation to exerciſe beneficence towards them ? But not to reſt in ſo general an anſwer, the following propoſitions may be laid down with regard to ſuch empire, in conſequence of what hath been ſaid by our Author, and in the preceding remarks ſubjoined to him, to his two laſt chapters in particular. 1. It is lawful to acquire and to poſſeſs dominion; for if it be lawful to acquire property, it muſt be lawful to acquire all that is neceſſarily attendant upon property, *i. e.* the dominion which an overbalance in property will neceſſarily produce. 2. As an attempt to change government, without changing the over-balance of property, or to fix government without a fixation of the balance of property, is an attempt contrary to nature; ſo to endeavour to violate property in order to change government, is unjuſt force. All violation of property is unjuſt. 3. But he or they who hold the over-balance of property, and conſequently the reins of government, are certainly obliged by the law of nature to make their dependents as happy as they can, as much *men* as they can. This muſt be true, or the law of love is a mere empty ſound. And therefore, 4. Tho' it cannot be pronounced unlawful for one or many, who have the over-balance in property, to hold it, no more than it is for one or many, to make uſe of the authority their ſuperiority in wiſdom may give them; yet it is certainly unlawful to exerciſe power in conſequence of property in an injurious, oppreſſive manner over dependents, as if they were not men; as it is unlawful to make uſe of ſuperior prudence, or rather cunning, in order to deceive and miſlead thoſe who pay ſubmiſſion and reverence to it, to their ruin or hurt. 5. It is certainly the natural right, nay, the natural duty of a people, when providence puts it in their power, by any revolution bringing property to ſuch a balance, that an equal happy government can be conſtituted, to conſtitute ſuch a government, and to fix and ſecure its duration by the only natural way of fixing and ſecuring it. This muſt be their duty, if it be a people's duty to conſult their beſt intereſt, or to provide for their own greateſt good, and the ſecure continuance of happineſs to their poſterity. And then does providence give this opportunity, and conſequently call to this duty, when by the courſe of things, without forcible removal, or violation of property, the people come to have the balance. And, 6. Whoever hold the over-balance of property, and by conſequence the reins of empire, one or the few, he or they are under the ſame obligation, to conſtitute ſuch orders of government as may beſt promote and ſecure the general happineſs of the dependent people, that they are under to benevolence, becauſe this is what benevolence manifeſtly requires at their hands. I have ſaid the ſame obligation that they ly under to benevolence, becauſe of the diſtinction already explained, which is admitted by all moral writers between perfect and imperfect obligation. And that it is a glorious and noble part to act, who can doubt, who hath a juſt idea of true glory, I had almoſt ſaid, any feeling of humanity? Let it not be ſaid that this cannot be expected of mankind. This is an unjuſt reproach. Our Author has, in the ſcholium to § 144.

named ſome inſtances of generous princes, who made no other uſe of the rights, even of juſt conqueſt, but to make the conquered happy and free. And let me add ſome other examples from ancient hiſtory yet more heroic, as they are narrated, by an author often referred to and quoted in our remarks, with great ſatisfaction, with all the joy every beneficent mind muſt needs be touched with, by ſuch god-like inſtances of generoſity and public ſpirit. “ In thoſe ancient and heroic times (when men thought that to be neceſſary which was virtuous) the nobility of Athens having the people ſo much engaged in their debt, that there remained no other queſtion among theſe, than which of thoſe ſhould be King, no ſooner heard Solon ſpeak, than they quitted their debts, and reſtored the commonwealth, which ever after held a ſolemn and annual feaſt, called the *Siſacthia* or *Reciſion*, in memory of that action Nor is this example the Phœnix ; for at the inſtitution by Lycurgus, the nobility having eſtates (as ours here) in the lands of Laconia, upon no other conſideration than the commonwealth propoſed by him, threw them up to be parcelled by his Agrarian.

The Macedonians were thrice conquered by the Romans, firſt under the conduct of Titus Quintus Flaminius, ſecondly, under that of Lucius Æmilius Paulus, and thirdly, under that of Quintus Cæcilius Metellus, thence called Macedonicus. For the firſt time Philip of Macedon, who (poſſeſt of *Acrocorinthus*) boaſted no leſs than was true, that he had Greece in fetters, being overcome by Flaminius, had his kingdom reſtored to him, upon condition that he ſhould immediately ſet all the cities which he held in Greece and in Aſia at liberty ; and that he ſhould not make war out of Macedon but by leave of the ſenate of Rome, which Philip (having no other way to ſave any thing) agreed ſhould be done accordingly. The Grecians being at this time aſſembled at the Iſthmian games, where the concourſe was mighty great, a crier, appointed to the office by Flaminius, was heard among them proclaiming all Greece to be free ; to which the people, being amazed at ſo hopeleſs a thing, gave little credit, till they received ſuch teſtimony of the truth as put it paſt all doubt; whereupon they immediately fell on running to the proconſul with flowers and garlands, and ſuch violent expreſſions of their admiration and joy, as, if Flaminius, a young man about thirty three, had not alſo been very ſtrong, he muſt have died of no other death than their kindneſs, while every one ſtriving to touch his hand, they bore him up and down the field with an unruly throng, full of ſuch ejaculations as theſe : How ! is there a people in the world, that at their own charge, at their own peril, will fight for the liberty of another ? Did they live at the next door to this fire ? Or what kind of men are theſe, whoſe buſineſs it is to paſs the ſeas, that the world may be governed with righteouſneſs ? The cities of Greece and Aſia ſhake off their Iron-fetters at the voice of a crier ! Was it madneſs to imagine ſuch a thing, and is it done? O virtue! O felicity! O fame!

In this example we have a donation of liberty to a people, by reſtitution to what they had formerly enjoyed, and ſome particular men, families or cities, according to their merit of the Romans, if not upon this, yet upon the like occaſions, were gratified with *Latinity*: But Philip's ſhare by this means did not pleaſe him; wherefore the league was broken by his ſon Perſeus; and the Macedonians thereupon, for the ſecond time, conquered by Æmilius Paulus, their King taken, and they ſome time after the victory ſummoned to the tribunal of the General, where remembering how little hope they ought to have of pardon, they expected ſome dreadful ſentence: When Æmilius in the firſt place declared the Macedonians to be free, in the full poſſeſſion of their lands, goods and laws, with right to elect annual magiſtrates, yielding and paying to the people of Rome one half of the tribute which they were accuſtomed to pay to their own Kings. This done he went on, making ſo skilful a diviſion of the country, in order to the methodizing of the people, and caſting them into the form of popular government, that the Macedonians, being firſt ſurprized with the virtue of the Romans, began now to alter the ſcene of their admiration, that a ſtranger ſhould do ſuch things for them in their own country, and with ſuch facility, as they had never ſo much as once imagined to be poſſible. Nor was this all; for Æmilius, as if not dictating to conquered enemies, but to ſome well-deſerving friends, gave them, in the laſt place, laws ſo ſuitable, and contrived with ſuch care and prudence, that long uſe and experience (the only correctreſs of works of this nature) could never find fault in them.

In this example, we have a donation of liberty to a people, that had not taſted of it before, but were now taught to uſe it.

But the Macedonians rebelling, at the name of a falſe Philip, the third time againſt the Romans, were by them judged incapable of *Liberty*, and reduced by Metellus to a province."

Now, with reſpect to incapacity of liberty, I beg leave to add a remark from the ſame author. "A man may as well ſay, that it is unlawful for him, who has made a fair and honeſt purchaſe, to have tenants, as for a government, that has made a juſt progreſs, and enlargement of itſelf, to have provinces. But how a province may be juſtly acquired appertains to another place. *(Our author treats of juſt war afterwards*; and this Author treats of propagation and holding at great length) — The courſe Rome took is beſt; wherefore, if you have ſubdued a nation that is capable of liberty, you ſhall make them a preſent of it, as did Flaminius to Greece, and Æmilius to Macedon, reſerving to yourſelves ſome part of that revenue which was legally paid to the former government, together with the right of being head of the league, which includes ſuch levies of men and money as ſhall be neceſſary for the carrying on of the public work. For if a people have, by your means, attained to freedom, they owe both to the cauſe and you ſuch aid as may propagate the like fruit to the reſt of the world. But whereas every nation is not capable of her liberty to this degree, leſt you be put to doing and undoing of things, as the Romans were in Macedon, you ſhall diligently obſerve what nation is fit for her liberty to this degree, and what not; which is to be done by two marks: the firſt, if ſhe loves the liberty of mankind; for if ſhe has no care of the liberty of mankind, ſhe deſerves not her own. But, becauſe in this you may be deceived by pretences, which continuing for a while ſpecious, may afterwards vaniſh; the other is more certain, and that is, if ſhe be capable of an equal Agrarian; which, that it was not obſerved by excellent Æmilius in his donation of liberty, and introduction of a popular ſtate among the Macedonians, I am more than moved to believe for two reaſons. The firſt, Becauſe at the ſame time the Agrarian was odious to the Roman patricians. The ſecond, That the *Pſeudo-Philip* could afterwards ſo eaſily recover *Macedon*, which could not have happened but by the nobility, and their impatience, having great eſtates, to be equalled with the people: For that the people ſhould otherwiſe have thrown away their liberty, is incredible."

But becauſe it will be very eaſy to draw a ſolution from the principles which have been laid down to all the queſtions about government; and becauſe the enquiry, what conſtitution of government is beſt, belongs not to the preſent ſubject, we ſhall take leave of our author here, and add no more to what he ſays; but in the firſt place, That no maxim is more falſe than that whatever government is beſt adminiſtred is beſt. That only is good, which is, by its frame, well ſecured againſt bad men, and bad adminiſtration. 2. Nor is another maxim in politics leſs dangerous, which aſſerts that good men make good laws. It is the maxim of Demagogues. The truth is, that good laws or orders make good men. And a government ought to truſt to its conſtitution and orders, and not to men. 3. The chief matter, the whole myſtery of government is revealed to us every day (to uſe the words of an excellent author) by the mouths of babes, as often as they have a cake to divide; for this is their natural language, "I will divide, and you ſhall chooſe." To which we may apply what Horace ſays of other natural inſtincts or directions. *Unde niſi intus monſtratum?* The whole ſecret of a well poiſed equal government, lies in dividing and chooſing, as the ſame author we have ſo often quoted hath ſhewn at great length. Dividing and chooſing, in the language of a commonwealth, is debating and reſolving. And in order to a right diviſion and choice, as the council dividing, ſhould conſiſt of the wiſdom of the commonwealth, ſo the aſſembly or council chooſing, ſhould conſiſt of the intereſt of the commonwealth. The wiſdom of the few may be the light of mankind, but the intereſt of the few is not the profit of mankind, nor of a commonwealth. Therefore, as the wiſdom of the commonwealth is in the ariſtocracy, ſo the intereſt of the commonwealth is in the whole body of the people. And whereas this, in caſe the commonwealth conſiſt of a whole nation, is too unwieldy a body to be aſſembled, this council is to conſiſt of ſuch a repreſentative as may be equal, and ſo conſtituted as can never contract any other intereſt than that of the whole people. Whence it follows, 4. That government, *de facto*, may be an art, whereby ſome men, or ſome few men ſubject a city or nation, and rule it according to his or their private intereſt: which, becauſe the laws, in ſuch caſes, are made according to the intereſt of a man, or of ſome few families, may be ſaid to be the empire of men, and not of laws. Yet government, *de jure*, is an art, whereby a civil ſociety of men is inſtituted and preſerved upon the foundation of common right or intereſt, which is properly called by Ariſtotle, *an empire of laws*, and not of men. The neceſſary definition of a government, any thing well ordered, is, that it is a government, conſiſting of the ſenate propoſing, the people reſolving, and the magiſtracy exerciſing. Our excellent conſtitution hath been judged by the moſt renowned politicians the very beſt. See our author, § 116 in the ſcholium. But the diſcuſſion of this equally curious and important ſubject, belongs not to the preſent queſtion.

C H A P. VIII.

Concerning the immanent rights of majeſty, and the juſt exerciſe of them.

Sect. CXLVIII.

The internal ſecurity of a civil ſtate conſiſts in external juſtice.

THE *immanent* or *internal rights of majeſty*, are rights ſo inſeparably connected with it, that the ſecurity of the ſubjects cannot be attained without them (§ 134). Since therefore this ſecurity conſiſts in this, that no ſubject may be injured by any other, and every one may have his own, or whatever he has a perfect right to demand; the conſequence is, that it lies chiefly in *external juſtice*, by which we underſtand conformity of external actions to law; and therefore they are not in the wrong who contend, “That civil ſtates were conſtituted for the ſake of juſtice; or that (Velleius Pater. hiſt. 2. 80), by giving force to laws *, and authority to courts of juſtice, induſtry and religion might be encouraged, and property might be ſure, and every one might enjoy with ſecurity his own lawful acquiſitions:" And therefore they juſtly aſſert that a civil ſtate cannot ſubſiſt, unleſs that juſtice prevail in it, by which ſubjects are kept to their duty, Ariſtot. polit. 1. 2.

* For tho' none can deny, that internal juſtice, or a conſtant diſpoſition to injure no perſon, but to render to every one his own, be a more noble degree of virtue; yet that ſuch virtue is not to be expected from ſo many men as coaleſce into the ſame civil ſtate, will not be controverted. It will therefore be ſufficient, ſo to hold men to their duties by laws, that they ſhall conform their external actions to laws, and not refuſe to any one what he hath a perfect right to demand, or do any thing contrary to juſtice and equity. Yet it becomes good rulers to take all proper methods, by the right education and diſcipline of their ſubjects, to make internal juſtice or virtue to flouriſh among them. "It is the duty of prudent magiſtrates, (ſays Iſocrates in Areopag. p. 27.) not to multiply laws, but to endeavour to render their ſubjects ſincere lovers of juſtice. For it is not laws and edicts, but good education that will make a ſtate truly happy. Men who are not rightly formed will dare to deſpiſe the beſt laws; but thoſe who are well educated, are led by their inward diſpoſition to approve good laws."

Sect. CXLIX.

To ſovereignty therefore belongs a legiſlative power.

Becauſe external juſtice, neceſſary to the ſecurity of a civil ſtate, conſiſts in the conformity of external actions to law (§ 148), the conſequence is, that it is the office of the ſupreme powers to arm a ſtate with laws; and therefore they muſt have the right and power of law-making, and of executing the laws, and conſequently of adjuſting the laws to the end, form, and intereſt of the republic *. They have therefore power and right to add to them, take from them, abrogate or change them, as the good of the ſtate may require; which power is expreſſed by the Roman lawyers in a ſtile accommodated to the nature of the Roman government, by *rogare*, *obrogare*, *derogare*, *abrogare*, *ſurrogare*, Ulpian fragm. 1. 3.

* Becauſe there is this difference between natural and civil law, that the former hath for its object good and bad actions, internal as well as external; the latter reſpects indifferent and external actions, as far as the ſafety of a people or ſtate requires the regulation of them (lib. 1. § 18.); it is therefore impoſſible that the laws of all ſtates ſhould be uniform. Whence it is very difficult to determine which ſtate hath the beſt laws; and Herodotus ſays very juſtly (apud Stobæum ſerm. 21. p. 180.), " If one ſhould lay before a people laws of all ſorts, and bid them chooſe the beſt, every one would approve of the laws of his own ſtate; every people thinks their own laws the beſt." And indeed the laws which are beſt with regard to one ſtate, becauſe of its end and form of government, may not be proper for another ſtate; but, on the contrary, what is very advantageous to one may be very hurtful to another.

Sect. CL.

What civil law is, and what is its object?

Since there ought to be one underſtanding and one will in a ſtate (§ 114), which thus happens, when all the members have the ſame end in view, and chooſing the ſame means, regulate all their actions by the ſame rule; an agreement that cannot be expected, conſidering the diverſity of human diſpoſitions, otherwiſe than by the ſubmiſſion of all the members of a ſtate to the will of its rulers (§ 114); hence it follows, that the ſupreme power ought to make the rule known to which he would have them to conform their external actions, which are in themſelves indifferent. Now, this can only be done by preſcribing laws to them; and therefore civil laws are commands of the ſupreme power in a ſtate concerning the regulation of external, indifferent actions for the good and honour of the ſtate; whence it is evident, that this legiſlative power cannot extend to the ſubverſion of divine laws (l. 1. § 17).

Sect. CLI.

What power or authority the ſupreme magiſtracy hath with regard to divine laws.

We ſay, that civil laws conſiſt in the adjuſtment of the external indifferent actions of ſubjects to the honour and intereſt of the ſtate (§ 150). For tho' it be often neceſſary that magiſtrates repeat ſome divine poſitive as well as natural laws, and extend and interpret them *; give actions and civil remedies againſt tranſgreſſors of them; and threaten puniſhments to thoſe who ſhall dare to violate laws eſtabliſhed by God himſelf; yet it is plain, from the nature of the thing, that then theſe laws do not owe their original obligation to the will of the civil magiſtrate, but that he then only exerts himſelf, as guardian of the divine laws, to make their authority ſacred in the ſtate.

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* It is true, God hath commanded that nothing be added to or taken from the divine law, Deut. iv. 2. But the former ought certainly to be underſtood of ſuperſtitious rites contrary to the divine law, or of will-worſhip, to which the Jews were ſo propenſe. But this is no reaſon why the civil legiſlative may not extend a divine prohibition to caſes not expreſly included in it, that thus the divine law be more ſtrictly fenced and guarded. The Hebrew doctors call this a mound to law, by which men are kept at a greater diſtance from the violations of it, and the firſt ſteps towards tranſgreſſion are guarded againſt. See upon this ſubject Schickard, jur. reg. cap. 5. theor. 18. p. 391. and Carpz in his notes on that place, and Jo. Selden, de uxor. Heb. 1. 2.

Sect. CLII.

The conſtituent parts of a law.

Becauſe civil laws are commands of the chief magiſtrate concerning the regulation of external indifferent actions for the good and honour of the ſtate (§ 150); but ſuch is the nature of mankind, that internal obligation alone is not ſufficient to influence them (l. 1. § 8); nay, civil laws cannot produce internal obligation (l. 1. § 7); the conſequence is, that all civil laws muſt be enforced by ſome penal *ſanction*; and therefore a perfect law conſiſts of two parts, *the preceptive part*, and the *penal ſanction:* But rewards are not due by a republic to thoſe who obey its laws; unleſs ſomething be not promiſcuouſly enjoined to all the ſubjects, but it be proper that ſome ſhould be excited by a particular condition to do ſomething extraordinary for the public good *.

* This it is proper to obſerve in oppoſition to Cumberland of the laws of nature, proleg. c. 14. & cap. 5. § 40. where he aſſerts the promiſe of rewards to be no leſs neceſſary to maintaining the authority of laws than the commination of puniſhments. But a legiſlator does not owe rewards to thoſe who do what it would be criminal in them not to do, but to thoſe only who do any thing extraordinary for the common good (lib. 1. § 99). Hence in vain does he expect a reward, who does not commit murder or adultery, or theft, ſince he who perpetrates any ſuch crime is worthy of puniſhment. But one hath a right to claim a reward, if the legiſlator having proferred a recompence, he is thereby excited to carry proviſions to ſhips, to furniſh arms at his own expence, or to do any ſuch like good ſervice to the public, to which all and every one are not obliged. And in this appears the wonderful goodneſs of God, that whereas he hath a right to threaten puniſhments to the tranſgreſſors of his laws, without promiſing rewards to the obedient, he profers recompences, recompences even to a thouſand generations, to them who obey his will, Exod. xx. 6.

Sect. CLIII.

Penal ſanction is either definite or indefinite.

Seeing by puniſhment is underſtood an evil effect of the tranſgreſſion of a law *(*l. 1. § *99)*, which evil effect may conſiſt not only in a certain evil of ſuffering, but likewiſe in the nullity of the act done in diſobedience to a law; yea, in both: For this reaſon, a law which both pronounces an act contrary to it null, and renders a tranſgreſſor liable to ſome evil of ſuffering, is called by the Civilians *a perfect law*; and other laws are called *imperfect*, or *leſs than perfect*, Ulpianus fragment. I. I. Moreover, becauſe an illicite action may be either determinate or indeterminate, and may be varied by a great diverſity of circumſtances (l. I. § 100), the conſequence is, that puniſhment may be *definite* or *indefinite* and *arbitrary*.

Sect. CLIV.

Judiciary power likewiſe belongs to the ſupreme magiſtrate.

Becauſe laws would be ineffectual, were they not applied to facts; *i. e.* unleſs enquiry were made into the agreement or diſagreement of actions with laws (l. I. § 95); it follows, that there muſt be ſome perſon, in a civil ſtate, who hath the power of judging of the imputation of actions; which power, is nothing elſe but a power of judging of the actions of others (l. I § 97); whence it is plain, that *judiciary power* is neceſſary in a republic. Now, becauſe between equals neither magiſtracy nor puniſhment can take place (§ 6), this judiciary power in a republic muſt belong to the ſuperior; *i. e.* to the ſupreme power in it*; and therefore it is one of the internal rights of majeſty (§ 134).

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[*] Indeed a father of a family may adminiſter juſtice in a natural ſtate to his ſegregate family, as we have already obſerved (§ 92). But in a republic that cannot be done, but ſo far as the laws permit the head of a family to do it (§ 93). Judiciary power therefore in civil ſtates, belongs to the ſupreme magiſtracy, which is chiefly conſtituted for this very end, according to the ancients, Heſiod. Theog. v. 88.

Hac una reges ſapienti lege creantur,
Dicere jus populis, injuſtaque tollere facta.

Sect. CLV.

What it is, and how it ought to be exerciſed.

But it being the office of a judge to apply laws to facts or actions, and actions contrary to law being either detrimental to the republic itſelf, or to private perſons; it follows from hence, that all judgments are either *private* or *civil*, *public* or *criminal*; the former of which conſiſt in determining ſuits or controverſies; the latter in puniſhing bad actions, Cic. pro Cæcin. c. 2. And tho' a prince cannot be blamed, if he delegates the judiciary power to prudent and good men, ſkilled in the laws (l. 1. § 101), and ſo conſtitute magiſtrates and judges every where; yet there ought always to be acceſs to the ſupreme power for thoſe who think themſelves oppreſſed by an unjuſt decree of the judges; and therefore, the ultimate determination of doubtful cauſes belongs to the Sovereign of a ſtate.

* Therefore, it belongs in monarchical ſtates to Kings and Princes; in ariſtocracies to the college of nobles; and in democracies, the right of appeal is to the people; nor ought any tribunal raſhly to be eſtabliſhed from which there is no appeal: This the Romans could not long brook under their Kings and Dictators, l. 1. 26. 2. 8. 3. 55. 10. 9. But becauſe the right of appealing may be not a little abuſed, it is not to be wondered at, that various remedies have been invented to reſtrain it within due bounds. Such are, the power of determining without appeal lodged in ſome magiſtrates, a certain ſum being defined by the law above which appeal may be made, an oath of calumny, a certain ſum of money to be depoſited by the appellant in caſe he ſhould be caſt, and the like; which, whether they be expedient or not, is rather a queſtion of civil prudence than of natural juriſprudence.

Sect. CLVI.

As alſo the power of puniſhing.

Becauſe it belongs to a judge to apply laws to facts, and to determine whether an action be imputable to a perſon or not (l. 1. § 95); but to impute an action, is to declare whether the effect aſſigned by a law to a certain action takes place or not (l. 1. § 99); hence it follows, that the Sovereign, who has the ſupreme judiciary power, has alſo the power *of inflicting puniſhments*. And becauſe

cauſe it cannot be denied, that he who hath the power of making laws, muſt alſo have the power not only of taking away a part of a law, or of making ſome exception to it, but even of abrogating a law (§ 149); much leſs can it be refuſed, that he hath the power of exeeming a delinquent for juſt reaſons from a law, ſo as to give him a remiſſion from the puniſhment due by it *.

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* The ſtoics denied this. Their maxim is known to every one: "Sapientem non dare veniam, nec ignoſcere," Diogenes Laert. 7. 123. Senec. de clement. 2. 6. 7. But if the moſt juſt God forgives ſins without violating his eſſential juſtice, why may not a ſupreme magiſtrate, who hath the power of making penal laws, cancel theſe laws; and why therefore may he not pardon a criminal? But we have ſaid *for juſt cauſes:* For as laws ought not to be enacted but for grave and important reaſons, ſo neither ought any indulgence to any one to be granted without juſt and good reaſons. But what if the puniſhment be appointed by a divine law? If it can be made appear that there is ſuch a penal law, we ſcruple not to affirm, that no Sovereign hath power to change ſuch a law, or to diſpenſe with it (lib. 1. § 17). But whether there be any ſuch law, hath been much diſputed among the learned, and is yet undetermined. See Thomaſius diſſert. de jure adgrat. princip. circa pœnam homicid.

Sect. CLVII.

Whether this power can take place among equals?

Hence again we conclude, that there is no right of puniſhing among equals *, and that neither one's integrity of life, nor another's confirmed inveterate habit of ſinning, gives an equal any right of puniſhing; and therefore, that the nature of puniſhment is not fully pointed out by Grotius's definition of it, who ſays, "It is an evil of ſuffering inflicted for an evil of doing." Nor by Becmann's, "who defines it to be pain inflicted for a crime." The evil of ſuffering inflicted by the ſufferer, is not puniſhment, but revenge; and if it be inflicted by a third perſon, who is not a ſuperior, it is injury. But that neither of theſe ought to be permitted in a civil ſtate, is plain from hence, that the judiciary power in it belongs only to the ſupreme magiſtrate, and thoſe to whom he hath delegated and intruſted it (§ 154, 155).

* For we are ſpeaking here of *civil puniſhment*, properly ſo called, and appointed by law, and not of *conventional*, to which one of his own accord ſubjects himſelf; nor of that revenge by which one deprives another of certain benefits on account of his crimes, renounces his friendſhip and acquaintance, *&c.* nor of theſe natural evils, ſuch as diſeaſes, pains, infamy, *&c.* which one brings upon himſelf by his wicked practices. Again, there is a great difference between puniſhing and that right of *chaſtiſing* which the laws give to parents, and ſometimes to a husband, and to a maſter. For *chaſtiſements* are applied at pleaſure by way of diſcipline: But *puniſhment*, properly ſo called, is inflicted by the preſcription or appointment of a law, in the way of juriſdiction. Whence it is ſelf-evident, that an equal cannot puniſh an equal; but he alone can puniſh who hath the right of making laws, and of applying them to facts: Which ſince the ſupreme magiſtrate alone hath the power of doing (§ 151 and 154), he alone therefore hath the power of puniſhing. It is then a very ſingular opinion of Grotius (of the rights of war and peace, 2. 20. 3. 1.) to ſay, "That nature ſufficiently ſhews it to be moſt proper that puniſhments ſhould be inflicted by a ſuperior; but that it cannot be demonſtrated, that it is neceſſary, unleſs the word *ſuperior* be taken in ſuch a ſenſe as to ſignify, that he who does a bad action, does thereby, as it were, detrude himſelf out of the rank of men, into that of the brutes ſubjected to men." As if moral ſuperiority or pre-eminence could give any mortal the right of puniſhing, and ſuperiority of empire were not neceſſary. See Thomaſius, juriſp. divin. 3. 7. 31. Wherefore, if an offender is puniſhed by the perſon injured, it is not puniſhment, but revenge; and if he is puniſhed by a third perſon, it is an injury. But that both theſe are prohibited in a civil ſtate, Grotius does not deny. And therefore *Sanio* in Terence reaſons much better, Adelph. 2. 1. v. 34. "I am a pimp, I confeſs: the bane of youth: a perjured villain: a common nuſance and peſt: but I have done you no injury."

Sect. CLVIII.

What are the ends of puniſhments.

Nor will it be difficult to determine what is the end of puniſhment from the very reaſon which makes it requiſite. For ſince puniſhment, properly ſo called, took its riſe upon the introduction of civil government (§ 6), and the right of inflicting it, is one of the immanent rights of civil majeſty (§ 134); the end of which is nothing elſe but the ſecurity of ſubjects; the conſequence is, that the ſame muſt be the end of puniſhments. But becauſe ſubjects are rendered ſecure, by reducing them in ſuch manner, that they ſhall no more be diſpoſed to tranſgreſs, or that they ſhall no longer have it in their power; *i. e.* either by amending them, or by taking the power from them of offending for the future; hence it is evident, that the former is the end of puniſhments, which are inflicted without taking away the criminal's life; and that the latter is the end of capital puniſhment, "puniſhment joined with the loſs of life, as Juſtinian ſpeaks, § 2. Inſtit. de pub. jud.*." And becauſe ſufficient proviſion would not be made for the ſecurity of the ſtate, if thoſe only who had offended ſhould ceaſe to tranſgreſs, and the like tranſgreſſions may ſtill be apprehended from others; it is obvious, that by the ſame puniſhments, as by examples, others ought to be admoniſhed of the danger of tranſgreſſing; and therefore the guilty ought to be puniſhed publickly, unleſs ſome weightier reaſon forbid it.

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* Hence it appears, that to human puniſhments, the end, of which ſome ſpeak ſo much, does not belong, *viz.* the expiation of guilt, and the ſatisfaction due to divine juſtice: For neither can we abſolve thoſe from cruelty, like that of Phalaris, who puniſh delinquents for no other end but to torment them. Nor could the ſuffering of a guilty perſon make any ſatisfaction to the infinite divine juſtice, had it not been ſatisfied by another ſatisfaction truly infinite.

nite. But they who talk in this manner do not conſider the origine of puniſhments, which is nothing elſe but the neceſſity of them to the ſecurity of a civil ſtate; and ſeem at the ſame time not to attend to the diſtinction between human and divine juſtice, and between civil puniſhments and thoſe eternal ones which abide ſinners in the life to come.

Sect. CLIX.

Whether a delinquent be obliged to ſuffer puniſhment?

Theſe principles being fixed, it is very perſpicuous, whether there be any obligation upon a delinquent to ſuffer puniſhment. For ſince he who lives in a civil ſtate, is obliged to all, without which its end, *i. e.* the public ſecurity, cannot be obtained or expected (§ 106), undoubtedly a delinquent is obliged to ſuffer the puniſhment defined by the law, tho' not to puniſh himſelf, and therefore not voluntarily to offer himſelf to cruel ſufferings *: no injury is done to one who ſuffers condign puniſhment, being convicted of a crime; nor is it lawful to any one to reſiſt the ſupreme power, when it inflicts the puniſhment appointed by law.

* Yea, becauſe puniſhment is an evil of ſuffering, from which nature is abhorrent, what one is willing to undergo would not be a puniſhment. Quintilian Declam. 11. ſays, " He is miſtaken who meaſures the attrocity of torments by their names: Nothing is a puniſhment but what is unwillingly undergone. We ſuffer no pain but by impatience, and it is fear that alone can make a thing appear cruel or terrible. Will any one call that a puniſhment to one, to which one runs, and which he calls for? Drag condemned malefactors whither they are unwilling to go." It is a barbarous cuſtom to force men to lay violent hands on themſelves, to rip up their bowels, or to take poiſon, or to chooſe any other way of death. For we are not obliged to be ourſelves the inſtruments of the puniſhment we are obliged patiently to ſubmit to.

Sect. CLX.

If all crimes ought to be puniſhed, and what crimes ought to be puniſhed.

Now, from the end of puniſhments (§ 158), we infer, that they ought to be adjuſted to the end of the republic, and therefore to be of ſuch a nature as is moſt proper for its internal ſecurity. Whence it follows, that the ſupreme power is obliged to puniſh ſuch crimes as diſturb the ſecurity of the ſtate, or hinder the ſubjects from living conveniently and tranquilly. But it is not neceſſary to puniſh vitious acts which reſt in the mind, nor yet ſuch minute faults as every man is liable to; nor the omiſſion of the offices of humanity, unleſs theſe crimes become, by their prevalence, dangerous, or diſgraceful to the ſtate, and therefore neceſſity oblige to reſtrain even them *.

* Thus we find in matters of treaſon, the very thought or knowledge of it in ſome ſtates is puniſhed; and in ſome nations inhoſpitality is puniſhed: We have given ſome examples of this, (lib. 1. § 216.) And we ſhall now add, that the ancient Germans commanded humanity to ſtrangers by laws, with penalties annexed to them. There are ſuch ſanctions in the *Lex Burgund.* 33. 1. *Capitular.* 1. 75. in which a pecuniary mulct is ordered againſt thoſe who ſhut their houſe or the market-place againſt a ſtranger. The Goths ordered by a law the houſes of thoſe to be burnt who had three times refuſed acceſs to travellers, Joan. Mag. hiſt. Goth. 4. 1. See Element. juris Germ. 1. 18. § 420.

Sect. CLXI.

Who are to be puniſhed.

It is abundantly plain, from the very definition of puniſhments (l. 1. § 99), that they only ought to be puniſhed who have committed any evil action; not their heirs or their families *, or ſureties, who bound themſelves to puniſhment for others, contrary to right and juſtice (l. 1. § 146). But ſince whole ſocieties conſtitute one moral perſon (§ 19), and therefore are bound by the ſame laws preſcribed to the reſt (§ 23), it is obvious, that communities and ſocieties may be puniſhed, tho' humanity itſelf pleads for the mitigation of the puniſhment, that the innocent may not ſuffer equally with the guilty; and that thoſe who tranſgreſſed by miſtake, or thro' weakneſs of judgment, may not feel the ſame ſeverity with thoſe who were the ſtirrers up and ringleaders in ſuch tumults. And in puniſhing large bodies, corporations or communities, that the remedy may not be worſe than the diſeaſe, care ought to be taken that fear may affect all, and puniſhment may reach but to few.

* The Perſians were ſo barbarous, of which cruelty, ſee Barn. Briſſon. de regno Perſic. 2. 227. p. 591. We have ſome traces of it in Daniel, vi. 24. and Eſther ix. 14. And that this barbarity ſtill prevails very univerſally in the eaſtern nations, hath been obſerved by thoſe who have deſcribed their manners with the greateſt accuracy. But as this uſage is abſolutely repugnant to right reaſon, ſo it is not poſſible by any prudence to prevent the falling of puniſhment inflicted upon parents, indirectly, at leaſt, upon their children, eſpecially when their eſtates are confiſcated by law. And this conſideration hath moved more humane legiſlators very rarely to uſe this puniſhment, and not but in caſe of treaſon, to confiſcate all the goods, that as much as it was poſſible for them to do, they might prevent puniſhment from extending ſo much as indirectly to the children of the puniſhed.

Sect. CLXII.

The principles upon which the quantity of puniſhment is determined.

What kind of, and how great puniſhments ought to be inflicted, is plain from the nature and end of puniſhment. For ſince the end of puniſhment conſiſts in the ſecurity of the ſubjects (§ 158), the conſequence is, that puniſhment ought to be ſufficient to impreſs fear, and to reſtrain and coerce evil diſpoſitions. But ſuch being the nature of mankind, that any evil concupiſcence, which hath once got poſſeſſion of the heart, cannot be reſtrained, but by ſetting before men a greater evil or good, (l. 1. § 52); hence we have reaſon to conclude, that a penal ſanction will not impreſs ſufficient fear, unleſs men judge it a greater evil to undergo the threatened puniſhment, than to omit the crime forbidden under that penalty, and be deprived of the pleaſure or profit they expect from it *.

Sect. CLXIII.

From theſe principles we further conclude, that the ſecurity of the civil ſtate does not admit of the puniſhment of retaliation, or like for like *. Nor is the rule about proportion between the crime and the puniſhment a juſt one, unleſs it be underſtood, not ſo much of the actions themſelves, as of the diſpoſition to perpetrate them. Beſides, ſince ſome crimes are more noxious to the public than others, and ſome tend more than others to its diſhonour, it is eaſy to find a reaſon why an action, which is more hurtful to the public ſecurity, is fenced againſt by

Concluſions from hence.

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* The puniſhment of injuries by the laws of the twelve tables, furniſhes us with an example. For it ſtruck ſo little terror into wicked rich men, that they rather took pleaſure in committing inſults, which could coſt them but a very trifling fine. The whole matter is related at great length by Aulus Gellius Noct. Attic. 20. 1. who tells us there, " That the fine for an injury or inſult being a very few pence, that hardly any one was ſo poor, as that he could be reſtrained by it from indulging his arrogance and inſolence. And therefore Labeo in his commentary on the twelve tables, did not approve of this law. He mentions one L. Neratius, a perſon of remarkable pride and inſolence, whoſe great joy it was to give a freeman a blow on the face with his fiſt, and who went about diverting himſelf in this outrageous manner, attended with his ſervant, who carried a purſe to count down the fine of five pence, appointed by law for the offence to every one he cuffed. For which reaſon, the Prætors afterwards aboliſhed this law, and publiſhed an edict, in which they conſtituted themſelves repairers of eſtimable injuries." So far then was ſuch a ſlight penalty from checking, that it rather provoked and encouraged inſolence and injuriouſneſs.

by more ſevere and awful puniſhment, and puniſhment is augmented when crimes become more frequent.

* God himſelf ſeems to have approved this law, Exod. xxi. 23. Levit. xxiv. 50. Deut. xix. 19. That law of the Decemviri is alſo well known, " Si membrum rupſit, ni cum eo pacit, talio eſto." apud Gell. Noct. Attic. 20. 1. But as the Jewiſh Rabbis themſelves ſo interpret the divine law, that ſuch injuries might have been expiated by money conſiſtently with it: So Cæcilius denies that ever this law took place among the Romans, apud Gell. ibid. And they are perhaps proverbs indicating, that he is not injured by one who ſuffers the ſame from another, he himſelf did to him, tho' perhaps the ſame thing may not occaſion equal ſuffering to both. See Jo. Clericus ad Exod. xxi. 22. In which ſenſe Pythagoras ſaid puniſhment was compenſation, or equal ſuffering. However that may be, that the law of like for like hath not always place, may be proved from theſe conſiderations. 1. That ſometimes ſuch a puniſhment would ſcarcely deſerve the name of puniſhment, *e. g.* if I ſhould be ordered to take as much money from one as he had taken from me, in the highway; or if a man of no rank give a blow to a magiſtrate, ſhould be ſtruck himſelf by the magiſtrate. 2. Sometimes it cannot be done, *i. e.* the one cannot be made to ſuffer as much as the other, *e. g.* if a perſon with one eye ſhould beat out another's two eyes. 3. Sometimes equality cannot be ſo obſerved but that the delinquent muſt ſuffer more than the perſon injured. Thus, *e. g.* I know an inſtance of one run through the body by a night-walker in ſuch a manner, that his inteſtines not being touched he ſoon recovered. But could all the phyſicians in the world, with their united ſkill, thus run a ſword through one without doing him more miſchief?

Sect. CLXIV.

In appointing puniſhments regard ought to be had to all circumſtances.

But, as in the imputation of other human actions, ſo likewiſe in the imputation of crimes, all circumſtances ought to be attended to; for one circumſtance often changes the whole affair (l. 1. § 100). And therefore it may happen, that one ought to be more ſeverely puniſhed than another for the ſame crime; and in defining puniſhments, regard ought to be had not only to the perſon of the delinquent, but likewiſe to the perſon injured, and alſo to the object, the effect, the place, the time, and like circumſtances *.

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* Thus, with reſpect to the delinquent, he deſerves a greater puniſhment whom kindred, prudence, age, dignity ought to have kept back from a crime, than a ſtranger, an ignorant unthinking perſon, one under no ſpecial obligation, a boy or ſtripling, one of the lower rank of mankind (l. 1. § 113). A robuſt perſon will require a ſeverer corporal puniſhment than one of a weakly delicate conſtitution; and if a pecuniary mulct is to be inflicted, more ought to be laid upon a rich *Neratius*, than upon a poor man. In like manner, if an injury be done to a magiſtrate, or to a perſon of dignity, who will deny that it ought to be more heavily puniſhed than an affront to one of the vulgar and dregs of mankind? Beſides, if it be a crime to ſeize the goods of a private perſon to make gain of them; how much greater a crime muſt it be to rob the public, or to commit ſacrilege? Thus we find a ſoldier's deſerting from his poſt in an encampment is more ſeverely puniſhed than one's running away from winter-quarters, on account of the more dangerous conſequences of the former. And in like manner, all equal judges pronounce an injury done in church, or during divine worſhip, more heinous than one done in a private place, and at another time. So that the public ſenſe does not approve the doctrine of the Stoics, concerning the equality of all crimes, Cic. Paradox. 3. Diogen. Laert. 7. 120. againſt which we find Horace reaſoning thus:

Non vincet ratio hoc, tantumdem ut peccet, idemque,
Qui teneros caules alieni infregerit horti,
Et qui nocturnus divûm ſacra legerit. Adſit
Regula, peccatis quæ pœnas irroget æquas:
Ne ſcutica dignum horribili ſectere flagello.

Horat. Serm. 1. 3. v. 115.

Sect. CLXV.

Puniſhments inflicted to amend perſons, ought not to be ignominious.

Nor ought it to be forgot, that ſince all puniſhments are not intended to cut off the flagitious delinquent; but they are often only intended to reform him, and make him more regular and circumſpect for the future (§ 158); care ought therefore to be taken, that all who ſuffer for their faults be not marked with ignominy; becauſe they would thus be no longer uſeful members in the republic, and could ſcarcely gain their living by any honeſt art or employment.

Sect. CLXVI.

A Sovereign hath the power of laying on taxes and impoſts, and hath a certain eminent dominion.

To the internal rights of majeſty belongs the power of exacting *tributes* and *taxes* from ſubjects, and of applying their goods to public uſes when neceſſity ſo requires; which laſt is called *eminent dominion* *. For all being in the power of a Sovereign, without which the end of a republic, *viz.* internal and external ſecurity, cannot be obtained (§ 133); which cannot be obtained without contributions from the ſubjects for bearing the neceſſary charges of the republic, and unleſs the Sovereign may ſometimes apply the goods of ſubjects for public uſes; the conſequence of this is, that Sovereigns muſt have a right to exact contributions from ſubjects, and likewiſe a right of exercing an eminent dominion.

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* We confeſs that this term is not very appoſite to expreſs the thing, the ideas of empire and dominion being very different, and becauſe the former and not the latter belongs to Sovereigns. Wherefore, what Grotius (of the rights of war and peace) firſt termed *dominium eminens*; Seneca of benefits, 7. 4. has more properly called *poteſtas*. "Ad reges, poteſtas omnium, ad ſingulos proprietas pertinet." See V. A. Corn. van Bynkerſh. Queſt. jur. publ. 2. 15. p. 290. And hence certain lawyers of Wirtemberg have contended againſt Jo. Fr. Hornius, that this ſupreme right is not to be derived from dominion, but from ſovereignty. (See Guil. Leyſeri collectio ſcriptorum eriſticorum pro imperio contra dominium eminens). But this debate being about words, while all are agreed that a Sovereign hath the right of applying the goods of ſubjects to

public uſes, when neceſſity requires it, there is no reaſon for exploding a received phraſe.

Sect. CLXVII.

What this right is in the ordinary ſtate of a republic.

Now, ſince a Sovereign hath this right (§ 166), it is obvious, that to him belongs the protection and guardianſhip of private properties *; that when the exigencies of the ſtate require it, they may be ready, and in a condition to anſwer the neceſſities of the republic; and therefore he has a right of making laws concerning the right uſe of property, and concerning alienations and conveyances (l. 1. § 317); as likewiſe of ſettling commerce by treaties, and of reſtricting it according as the intereſt of the republic may require; of regulating import and export, promoting manufactures and arts, making ſumptuary laws; and, in one word, of doing every thing to make the ſtate thriving and opulent, and ſufficient to defend and maintain itſelf in a flouriſhing condition.

* Upon this depends the right of Sovereigns to give tutors and curators to minors, to perſons labouring under any diſeaſe which incapacitates for buſineſs, to mad perſons, to prodigals, to women, *&c.* and of preſcribing rules to ſuch adminiſtrators, calling them to an account, and removing them from their truſt, if they are unfaithful. See Plato de legibus, l. 11. where he ſays, that pupils are under the care and guardianſhip, not of private perſons, but of the public, and are one of its moſt ſacred charges. Hence the Germans, from the moſt ancient times, claimed from their Emperors a certain ſupreme guardianſhip or tutorage, of which I treated long ago in a diſſertation de ſuprema principum & magiſtratuum tutela.

Sect. CLXVIII.

And what in an extraordinary ſtate.

Such is the right of ſovereignty in the ordinary ſtate of a republic. But becauſe it is in an extraordinary ſtate of the republic that eminent dominion takes place (§ 166), the conſequence is, that a Sovereign has the right, in time of war, to make encampments upon the fields of private perſons, and to make neceſſary fortifications and public works upon them, l. 9. C. de oper. public. to bring in corn and other neceſſaries by foraging; to make new highways through the lands of ſubjects when the old ones fail, l. 14. § 1. D. quemadm. ſerv. amitt. throw down houſes in the ſuburbs when Hannibal is at the gates, and ſuch other like things.

Sect. CLXIX.

When this eminent dominion juſtly takes place.

But ſince this right only takes place in urgent *neceſſity* (§ 166), and ſince that is neceſſary, without which the public good, *the ſupreme law in every ſtate* (§ 24), or liberty, property and ſecurity, cannot be maintained and preſerved; hence we may juſtly infer, that this right may not only take place when the extreme neceſſity of a republic requires it, but even as often as it is truly requiſite to the public utility; eſpecially ſince utility often becomes neceſſity (V. A. Corn. van Bynkerſh. ibid. p. 292). But this right ſcarcely takes place, when it is merely the private intereſt of the Sovereign that demands it, if any one's juſt right is taken from him by it; much leſs, when it is not his real utility but pleaſure that is the motive. And, in fine, of ſuch a nature is this eminent dominion, that a good prince will eaſily ſubmit to fixing bounds to it, and will uſe it very modeſtly (Bynkerſh. ibid.) *.

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* We have added theſe limitations, becauſe without them this right would degenerate into the higheſt injuriousneſs. Hence God *was exceeding wroth* with King Achab, when he would have violently extorted Naboth's vineyard from him, becauſe contiguous to his palace, that he might make a Kitchen-garden of it, 1 Kings xxi. 2. For ſuch a demand proceeded rather from the wantonneſs and voluptuouſneſs of a wicked King, than from real utility. The Roman ſenate refuſed an action to the Prætors againſt M. Licinius Craſſus, when they would have carried an aqueduct thro' his ground, becauſe they ſaid it was ra-

ther a matter of pleaſure and ornament than of public utility, Liv. 40. 51. Thus the caſe is repreſented by Marc. Zuer. Boxhorn. Diſquiſit. polit. caſu 31. Yet Bynkerſh. hath produced a charter by William Prince of Orange, in which he gives power to the magiſtracy of Leyden, of taking poſſeſſion of the court-yards of private perſons, paying them the price, even though it was not otherwiſe neceſſary, but for the ornament of the Academic buildings, and the pleaſure of the ſtudents: upon which, however, he adds this remark, " Such a right I would not uſe, nor did the Roman ſenate uſe it in the caſe of Craſſus; nor did even Auguſtus uſe it, of whom Sueton tells us, Aug. c. 56. " That the Roman Forum was made narrow by him, becauſe he would not take the neighbouring houſes from their proprietors."

Sect. CLXX.

How they ought to exerce it.

Since equity teaches us that the common burdens of the republic ought to be ſupported at the common charge (§ 166), the conſequence of this is, that one ſubject ought not to be loaded more than another; and therefore, that compenſation ought to be made to him who muſt part with any thing for the public utility out of the treaſury or the public coffer *. And if that cannot be done immediately, they who are thus deprived of any part of their property have a right to exact it, unleſs they build contrary to law, and ſuch an edifice, or whatever kind of work it is, be deſtroyed, the public utility ſo requiring. For, in this caſe, ſo far are they from having a right to demand refunding the value, that they are liable to the penalty appointed by the laws. V. A. Corn. van Bynkerſh. ibid. p. 297.

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* This is acknowledged by Grotius of the rights of war and peace, 2. 14. 7. by Pufendorff of the law of nature and nations, 8. 5. 7. by Huber de jure civitatis, 1. 3. 6. 44. and by all who have treated at any length of this dominion; among whom Bynkerſh. ibid. deſerves the firſt place, who has ſhewn that the Romans followed this maxim, from Tacitus Annal. 1. 75. and l. 9. cod.

de oper. pub. And undoubtedly the ſame principle of equity takes place here, upon which the Rhodian law concerning goods thrown over board, was founded, Paulus l. 1. D. ad leg. Rhod. *viz.* That what is given up for all ſhould be made up by the contribution of all.

Sect. CLXXI.

Whether it can be extended to the goods of foreigners not enemies.

Beſides, from the ſame definition it is plain that this right can only be exerciſed upon the goods of ſubjects, and not upon the goods of foreigners who are not enemies. Wherefore thoſe princes are hardly excuſable, who lay their hands upon the goods and merchandize of nations in friendſhip with them, force them to lend them money, or ſeize their ſhips to tranſport troops or proviſions. But ſuch preſſing, as it is called, is frequent, and defended under this colour, that foreign ſhips, found in the harbours of a prince, are ſubject to him *; and it is practiſed by a received cuſtom among nations and empires.

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* Since the Greeks returning from the expedition of Cyrus, could not ſo much as uſe this colour, what they did is ſo much the leſs excuſable, tho' Grotius does not ſeem to condemn it (of the rights of war and peace, 2. 2. 10). By Xenophon's advice, as he himſelf tells us, de expedit. Cyr. 5. 1. 6. they, having the moſt preſſing occaſion for ſhipping, ſeized ſuch as paſſed by, but ſo that the cargo was preſerved untouched for the owners, and to the ſeamen they not only gave proviſions, but paid them the freight." This indeed had been excuſable on account of neceſſity, had it been a public expedition. But we cannot ſee how this right could in any way belong to a handful of ſoldiers, who had engaged in an expedition with Cyrus without the conſent of their ſeveral ſtates, an expedition more memorable by its greatneſs than its juſtice.

Sect. CLXXII.

What is the exchequer and treaſury.

So much for the *eminent dominion* or *tranſcendental propriety*. As to *taxes* and *impoſts*, it is the intereſt of a republic to be ſtrong in money on a double account. Firſt, in order to ſupport its Sovereign ſuitably to his dignity. And ſecondly, that money, the nerves of all buſineſs, may not be wanting either in time of war or peace; and therefore in republics there are uſually two public coffers, one of which is intended for the ſuitable maintenance and ſupport of the Sovereign, and is called *the exchequer*; the other for the public uſe, which is called *the treaſury* *. That both of theſe ſhould be well filled, is greatly the intereſt of every civil ſtate.

* It is right to diſtinguiſh theſe two, tho' not unfrequently in monarchies princes take all to themſelves in ſuch a rapacious manner, that there is in fact no difference between the two. Dion. Caſſius, hiſt. 53. p. 506. tells us, That Auguſtus had both money and ſoldiers at his abſolute command; and he adds, "And tho' in words he diſtinguiſhed between his own money and the public treaſury, yet in fact he made uſe of both at his pleaſure." But here we are not enquiring what is done, but what ought to be done: and therefore, it is proper to diſtinguiſh between theſe two public coffers, as is carefully done even in ariſtocracies and other republics.

Sect. CLXXIII.

What hath been contrived for enriching the treaſury.

Since the money deſtined for the ſupport of a Sovereign is brought into the (*fiſcus*) or *exchequer*, (§ 172), ſome nations have thought fit not only to aſſign to their Sovereigns certain lands and territories, out of the revenues of which their dignity is to be ſupported, which are now called *deſmenes* of the crown, or *crown-lands*; but likewiſe certain cuſtoms, duties, tollages, or taxes; and all things within the territory of the republic not under dominion (l. 1. § 243 & ſeq.); which latter way of enriching the king's treaſury hath been the more readily agreed upon in all nations *, that it is done with the leaſt coſt to particulars.

* The nations of German origine chiefly, of whom Grotius of the rights of war and peace, lib. 2. c. 8. § 5. ſays, " The people of Germany conſulting about making ſome allowances to their Princes and Kings to ſupport their dignities, thought it proper to begin with ſuch things as might be given without damage to any one, ſuch are thoſe which no perſon could lay particular claim to, which I find that the Egyptians alſo practiſed. For there the King's Intendant, whom they called ἴδιον λόγον, ſeized on all ſuch things to the uſe of the crown." But what Grotius ſays here of the Egyptians, as from Strabo, whom he quotes in the margin, Geog. l. 17. p. 1148. edit. noviſſ. does not relate to the Egyptians, but to the Romans, after they had reduced that country to the form of a province. The office which Strabo calls ἴδιος λόγος, was the ſame as the *Digeſt* calls *Procurator Cæſaris*, or *Rationalis.* What Strabo ſays is this, " There is another officer called ἴδιος λόγος, whoſe buſineſs it was to demand ſuch things as had no maſter, and conſequently ought to fall to Cæſar." This is juſtly obſerved by Caſaubon on this paſſage of Strabo.

Sect. CLXXIV.

His rights over his demenial goods.

Since therefore the demains of a Sovereign are intended for the maintenance of his dignity (§ 173), it is plain that they cannot be alienated, and therefore may be reclaimed by a ſucceſſor ſingular or univerſal, if they are alienated; nor does it make any difference whether they are alienated in part or in whole, ſince of what is not ours we cannot alienate the ſmalleſt part, as Grotius juſtly obſerves (of the rights of war and peace, 2. 6. 11.) where he remarks, that ſuch alienations made with the conſent of the people are valid *, and the fruits of this demain or patrimony of the crown are to be diſtinguiſhed from the patrimony itſelf.

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* Whether the people originally conſented, or afterwards ratified the alienation, of which innumerable inſtances hath happened in Germany. For the ancient Emperors being ſo very profuſe in giving away their demains, eſpecially to the church, that at preſent hardly any of them

remain; none will ſay, that the Emperor can now reclaim them, ſince theſe alienations have been confirmed long ago by the orders of the Empire; yea, tho' the Emperor uſually promiſes to recover the rights and revenues of the Empire, Capitul. Caroli 6. art. 10. yet this is underſtood by the interpreters of the public law of Germany, to mean ſo far as it can be done conſiſtently with the public laws. And the Emperors and Kings, who were ſollicitous about this recovery, had very bad ſucceſs, ſuch as Henry V. Rudolph I. Albert I. and others. See Schweder diſſert. de domanio imperii.

Sect. CLXXV.

The right of a Sovereign over things which have no maſter.

Moreover, becauſe things having no maſter have been aſſigned to Sovereigns (§ 173), it is not difficult to find a reaſon why the crown every where pretends to a right to all thoſe things which are by the Roman law pronounced either common or public, as the ſeas which waſh their territory, rivers, large foreſts, and therefore the rights of fiſhing and hunting; as alſo the right of digging for minerals and metals, and of taking poſſeſſion of vacated goods, and of gems or precious ſtones caſt out by the ſea, alluvions, new iſlands, deſerted channels, and, in ſome places, trove-treaſure, and vagabonds and baſtards; tho' all theſe things differ according to the different uſages of nations, as Huber has juſtly obſerved, de jur. civ. 2. 4. 4. 48. p. 468.

* The diſputes about the dominion of the ſea between Grotius and Selden, Rob. Jonſton, Petr. Bapt. Burgus, Guil. Welwood, Jo. Iſaac Pontanus, Theod. Graſwinckelius, and more lately between Pufendorff, Huber, Jac. Gothofredus, Jo. Hen. Boeclerus, Corn. van Bynkerſhoek, and Chriſt. Thomaſius, and others, are known; nor need we enter into the controverſy. We are of opinion, that as none can doubt that the ſea is under the dominion of none, ſo it cannot be queſtioned but it may be occupied, and falls to the occupant, (lib. 1 § 241); eſpecially ſince that hath been long ago done, and is ſtill, as experience teaches us. But becauſe things of exhauſtleſs uſe are not

occupied, nor is it lawful to exclude others from the uſe of them by occupancy, (lib. 1. § 235), ſome things in the ſea being of exhauſtible uſe, ſuch as the larger kinds of fiſhes, pearls, tolls, and ſuch other emoluments; and other things being of inexhauſtible uſe, as navigation; others may be excluded from the former, but not from the latter. Much more then have they who have certain territories beyond ſea, a right to exclude all others from navigation to them, whether with a view to occupancy or for commerce, unleſs it be otherwiſe provided by treaties and pacts; ſince it depends upon the will of every nation, to permit or not permit commerce with foreigners to its ſubjects. But navigation to other territories not belonging to us, for the ſake of commerce, is as unjuſtly denied by us as the uſe of a public road, unleſs this navigation be hindered by pacts and treaties. This is our opinion about this celebrated queſtion. Nor need we be very anxious about it, ſince this matter is rather decided by force than by words and arguments; ſo true is what Horace ſays, Carm. 1. 3. v. 21.

Necquidquam Deus abſcidit
Prudens Oceano diſſociabiles
Terras, ſi tamen impiæ
Non tangenda rates tranſiliunt vada.
Audax omnia perpeti
Gens humana ruit per vetitum nefas.

Sect. CLXXVI.

Other laws of the Exchequer.

Since it is the intereſt of the republic that the exchequer ſhould be as rich as poſſible (§ 172), it is not ſtrange that other advantages and means of gain are given to it; eſpecially the right of coining money, mulcts, and contreband goods, and the right of ſeizing * all unlawful acquiſitions, and other ſuch, which are commonly, tho' not ſo juſtly, called *the regalia minora* (§ 133). But here the cuſtoms of nations are different, according as kingdoms allow more or leſs to Sovereigns, or they have arrogated more or leſs to themſelves by long uſe.

Sect. CLXXVII.

The treaſury is enriched by taxes and duties.

As for the public treaſury, it is chiefly filled by taxes and duties, unleſs there be ſo much public land that the republic can be preſerved by its revenues. For ſince (§ 172) republics can do nothing without money, either in war or peace (Tacit. hiſt. 4. 74), and, there not being a ſufficient quantity of public land, that can be no otherwiſe got than from the ſubjects; the conſequence is, that the chief magiſtrate can impoſe tributes and taxes upon the ſubjects, either with or without the conſent of the different orders of people in the ſtate, according to the different forms of government; and that they may lay them upon perſons, lands, merchandize imported and exported, conſumable commodities, manufactures and commerce, as is moſt convenient, provided regard be had to the condition of the people and the quality of things *, and ſubjects be not ſo oppreſſed, that they, like ſlaves, do not acquire to themſelves, but to their Sovereign.

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* This appeared moſt equal to Serv. Tullius King of the Romans, and by that means he was very popular, Dion. Halicar. antiq. Rom. lib. 4. p. 215. He declared he would not ſuffer the poor to be over-loaded with taxes, and to be obliged to contract debt; and therefore, that he would rather make a valuation (*cenſus*) of the eſtates of his ſubjects, and make every one contribute according to his fortune, as uſed to be done in well conſtituted and regulated ſtates. "For (ſaid he) I reckon it juſt that he who has large poſſeſſions ſhould contribute largely, and that little ſhould be exacted from thoſe who have but little."

Sect. CLXXVIII.

What is juſt with regard to it.

But if in levying taxes, regard ought to be had to every one's faculties, and the ſubjects ought not to be oppreſſed with burdens (§ 177), it is manifeſt that what is above the power of the ſubjects, ought not to be exacted from them; nor ought they in times of peace to be ſo ſpunged, that they can be able to contribute nothing in caſe of danger: Beſides, this contributed money ought not to be collected with too much rigidity, and it ought to be honeſtly and faithfully managed, and employed for the purpoſes to which it is deſtinated, or which the very end of the contribution requires. This is evident from the nature of the thing.

Sect. CLXXIX.

The right of the Sovereign to conſtitute magiſtrates and miniſters.

Moreover, another of the internal rights of majeſty, is to conſtitute *miniſters* and *magiſtrates* (§ 134). By *miniſters* we underſtand thoſe who govern a part of the republic entruſted to them in the name of the Sovereign: By *magiſtrates*, who manage a part committed to them in their own name, but dependently on the Sovereign. Since therefore miniſters act in the name of the Sovereign, and magiſtrates dependently on him, the conſequence is, that the Sovereign has the ſole right of nominating them, unleſs he hath granted to others the right of chooſing and preſenting, or to a community the right of election: that they are under particular obligation to him, and are bound to render account to him, and may be juſtly degraded from their dignity by him, if they do not acquit themſelves well in their charge; nay, may be puniſhed, if they be guilty of knavery, or any groſs miſdemeanor, as the demerit of their crime requires *.

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* But an unfraudulent counſel or deſign, diſappointed by the event, is not puniſhable, ſince none can be obliged to anſwer for the event of things. Nor does he deſerve puniſhment who executes the commands of his prince or country, if it be not contrary to juſtice and morality. See V. A. Corn. van Bynkerſh. Quæſt. jur. publ. 2. 2. p. 196. & ſeq. It was therefore a barbarous cuſtom of the Carthaginians to puniſh their beſt Generals, if their deſigns miſſed of ſucceſs. Nor is that cuſtom of the Turks

and other eaſtern nations leſs deteſtable, who meaſuring a counſel by the event, condemn thoſe whoſe deſigns prove ſucceſsleſs. For this is not only contrary to juſtice, but to prudence. "If any one, ſays that excellent writer, deſire advice in difficult affairs; there are many who are capable of giving it; but none will anſwer for the event; and if you require this, none will aſſiſt you with their counſel, no, not one."

Sect. CLXXX.

The duties of Sovereigns and their miniſtry, and of magiſtrates.

As a part of the public concerns is entruſted to miniſters as well as magiſtrates (§ 179), it therefore is the duty of a prince to know his men well, and to take care to chooſe none but ſuch as are proper for the truſt; and it is the duty of ſubjects, on the other hand, not to ambition truſts to which they are not equal; and much more is it ſo, not to brigue for them, or to uſe bribery, largeſſes, and other vile arts to procure them, or to buy them, unleſs it appear to the Sovereign to be for the intereſt of the republic that ſuch offices ſhould be matter of commerce. Moreover, it is ſelf-evident that every miniſter and magiſtrate is obliged to all diligence and fidelity, and to regard the happineſs of the ſtate as his chief, his ſupreme law; and much more is this obligation incumbent upon a firſt and chief miniſter, upon whoſe ſhoulders the Sovereign hath laid the chief burden of the government*.

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* Such are uſually called (*miniſtriſſimi*) chief miniſters; and concerning theſe, two queſtions are commonly asked; firſt, whether it be for the intereſt of a ſtate to entruſt the care of the whole ſtate to one: And ſecondly, whether it can be lawfully done. The firſt is a queſtion of civil prudence or expediency, upon which it is worth while to read Hert. Elem. prud. civil. I. 10. 11. Guil. Schroeter and Jac. Thomas their diſſertations on this ſubject. The latter may be eaſily anſwered by any who have conſidered with any attention the principles of the law of nations. For ſince we may delegate to another what we do not think ourſelves ſufficient to manage, why may not princes likewiſe delegate their office to others, eſpecially when age, the

weight of government, and other juſt reaſons induce to it: And if it be not unjuſt to put a Kingdom under tutorage, while the King is not of an age to take the reins of government into his own hands, why ſhould it be deemed unjuſt for a King to commit it to a miniſter? However, a prince would act moſt unjuſtly, if he ſhould devolve the care of the public upon a firſt miniſter, merely that he might purſue his pleaſure, and not be troubled with it, ſince he ought to uſe him as a miniſter, and not transfer the government abſolutely to him. The Perſians ſeem to have been ſenſible of this, when they called miniſters *the eyes and ears of the King*, Xenophon Cyrop. 8. 2. 7. p. 483. of which Briſſon. de regno Perſic. has diſcourſed at large, lib. 1. § 190. p. 264.

Sect. CLXXXI.

The right in ſacred things belonging to Sovereigns.

One of the chief immanent rights of Sovereigns is the right relative to religion, ſacred things, or the church, by which we underſtand a ſociety formed on account of religion. Now, ſince (§ 23) all communities and ſocieties of the ſimpler kind ought to be ſo ſubordinated, that they may do nothing contrary to the intereſt of the larger ſociety; the conſequence is, that a church ought to be ſubordinate to the republic; and therefore, that the chief magiſtrate has the right of directing its affairs and concerns *. This may be proved from this conſideration, that a republic ought to have one will (§ 114), which could not be the caſe, if the church in a ſtate were not ſubject to the chief magiſtrate, but conſtituted by itſelf a free and independent community, not ſubject to the chief magiſtrate. Beſides, that ſince all the rights belong to majeſty, without which the ſecurity of the ſubjects cannot be obtained (§ 133); and experience has abundantly ſhewn us how much the internal and external ſecurity of ſubjects hath been diſturbed under the pretext of religion; who then can deny that a Sovereign has the right of ſo directing religious affairs that the republic may ſuffer no detriment?

* Therefore this right belongs to a Sovereign as Sovereign, and not as Biſhop, as ſome have ſaid, who have been ſolidly refuted by Hen. Boehmer. diſſert. de jure Epiſcop. princip. evangel. And therefore that diſtinction of Conſtantine the great (in Euſebius vita Conſtant. mag. 4. 24) between the overſight of things without the church and within the church, is without any foundation. Nor do they come nearer to the truth, who attribute this right about ſacred things to a Sovereign, as the primary member of the church; or they who derive it from compact; the firſt of which opinions is defended by Jæger. de jure ſuprem. poteſt. circa ſacra, cap. 3. p. 74. & ſeq. For it being a right of majeſty or ſovereignty, a Sovereign wants no other title to the exerciſe of it but his ſovereignty; whence the Roman lawyers have pronounced long ago, " Jus publicum etiam in ſacris & ſacerdotibus conſiſtere, l. 1. § 2. D. de inſt. & jur.

Sect. CLXXXII.

Whether it extends to articles of faith?

Religion, on the account of which men coaleſce into the particular ſociety called *a church* (§ 181), conſiſts chiefly of two things. The firſt is a juſt idea of God (l. 1. § 127). The laſt is perfect love to God (ibid. § 130). Now, from hence it is evident, that with regard to the former a Sovereign can have no power, ſince the underſtanding cannot be forced (l. 1. § 129) *; and therefore his right ought not to be ſtretched to a right of impoſing new articles of faith upon his ſubjects, and proſcribing former ones; (*i. e.* of impoſing a yoke upon their conſciences ;) tho' it be incumbent upon him to take care, that his ſubjects be inſtructed in the doctrines he judges to be agreeable to reaſon and revelation; and that theſe doctrines be rendered ſubſervient to promote piety and virtue, inſtead of feuds and diviſions, to the equal detriment of the church and ſtate.

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* The doctrine of Hobbes and others is therefore monſtrous, which ſubjects the conſciences of ſubjects to a Sovereign (§ 129). For not to inſiſt upon what was juſt now ſaid, that the underſtanding cannot be forced; and

that a Sovereign can no more command it to believe or not believe, than he can command the eye not to ſee what it ſees; what horrible butchery would theſe principles occaſion, if a Nero or a Domitian, poſſeſſed of ſovereignty, ſhould take it into his head that the Pagan or Mahometan religion was better for ſociety than the Chriſtian, or to forge a new one? Nay, who does not ſee, that this doctrine, deſpiſing the true, the ſole end of religion, perverts it into an engine of tyranny.

Sect. CLXXXIII.

What with regard to the internal worſhip of God?

As for divine worſhip, we ſaid before it is either *internal* or *external*. Now, the *internal* is of ſuch a nature, that the obligation to it is obviouſly deducible from principles of right reaſon (l. 1. § 130); and therefore, no mortal hath power to change it, (l. 1. § 17); and conſequently, a Sovereign can neither abrogate nor alter it; tho' all men being obliged to promote the glory of God to the utmoſt of their power (l. 1. § 128); a prince muſt be obliged, and have the right to take care that his ſubjects be duly inſtructed in the internal worſhip of God; to uſe proper methods to reform the impious, and bring them to a juſt ſenſe of the reverence they owe to the Supreme Being; *i. e.* by reaſoning and argumentation; and to guard his ſtate againſt the ſpreading either of atheiſm or ſuperſtition, by ſuch fences as the nature of religion and perſuaſion admits.

Sect. CLXXXIV.

What with regard to external worſhip?

External worſhip conſiſts partly in external actions flowing from love, fear, and truſt in God (l. 1. § 135), partly in arbitrary indifferent actions (ibid. § 138). With regard to the former, the ſame rule takes place as with reſpect to internal worſhip; and therefore, with regard to it, a good prince will arrogate no power to himſelf, beſides that of endeavouring to the utmoſt to promote it by due methods *. The latter are neither preſcribed nor diſapproved by reaſon (l. 1. § 138); and therefore they are ſubject to the direction of a Sovereign; and he hath all the right and power with regard to them, which is neither repugnant to reaſon nor revelation.

* Hence it is plain, that the ſupreme magiſtrate has no right to hinder any one from praiſing God with hymns, and offering prayers to him, or performing other ſuch religious actions; but he hath a right to preſcribe the order and manner in which theſe actions ought to be publickly performed. Therefore, the command of Darius, that none ſhould dare to petition either God or man during thirty days, was moſt abſurd, Dan. iv. 7. But the care of David and other pious Kings, to order the worſhip of God in ſuch a manner, that the people might neither want hymns to ſing to God, nor be ignorant of the moſt ſerious and decent way of ſinging them, was moſt reaſonable.

Sect. CLXXXV.

The chief articles of the power of a Sovereign about ſacred things?

Since all direction with regard to the arbitrary acts of external worſhip, which is neither repugnant to reaſon nor revelation, belongs to ſovereignty, (§ 184); the conſequence is, that the chief magiſtrate hath the right of reforming and of aboliſhing abuſes truly ſuch, ſo far as the public laws or pacts permit; the right of making and amending eccleſiaſtical laws; the care of eccleſiaſtical goods or poſſeſſions, and of applying them to their proper uſes; the right of juriſdiction over all perſons, cauſes, and things eccleſiaſtical; and of conveening and directing ſynods and councils *; and finally, the right of permitting meetings of diſſenters; or of not tolerating them, but obliging them to leave the kingdom, when important reaſons require ſuch ſeverity.

* They are called for various reaſons; as to confirm doctrines called into doubt by new decrees and creeds, and to conſult about indifferent rites; and in fine, to ſettle matters relating to diſcipline. Synods of the firſt kind are

contrary to the nature and genius of religion; firſt, becauſe that is not always true, which appears to be ſuch to the greater number; and in matters of opinion and belief, 'tis not the plurality of votes but the weight of arguments that ought to preponderate and determine. Next, becauſe theſe decrees of councils are obtruded upon the members of a church by way of laws, with public authority, whereas laws cannot be given to the underſtanding. Beſides, it often happens, that one part of the judges uſurps power over the reſt, and thus the wounds of the church are not ſo likely to be healed as to be feſtered; which is ſo confirmed by experience, that Gregory Nazianzenus, ep. 55. ad Procopium, ſays, "That he never expected any good from councils, and that they generally rather exaſperated than cured any evil." The other ſynods may be ſometimes of uſe to the church; but only when the church has no legiſlative power without the direction and authority of the ſupreme magiſtrate.

Sect. CLXXXVI.

The right or power of the chief magiſtrate about ſchools or academies.

Schools and *academies* are ſeminaries to the church and to the ſtate; nurſeries for miniſters, magiſtrates and good citizens, as well as for divines, their end being to inſtruct the youth in all uſeful arts and ſciences neceſſary to qualify them for the various offices of life, and the ſeveral different ſtations in which they may be placed, or profeſſions they may chooſe, as well as to form their manners to virtue and probity, and decency of conduct. For which reaſon, it is the duty of the ſupreme power in a ſtate to eſtabliſh ſuch ſchools, and to adorn them with good laws and conſtitutions, and with learned and well qualified profeſſors or maſters; to take care that no hurtful doctrines be taught in them, that diſcipline be kept upon a good footing; and, above all, that turbulent genius's do not ſow diviſions and contentions in them *; ſo as to render them like the ſchool of Megara in ancient times, ȣ̓ σχολήν, ἀλλὰ χολὴν; "Not a ſchool, but a ſeat of choler and ſcufling," Diogenes Laert. 6. 24.

* The miſchief ſcholaſtic wars do to youth, and to uſeful learning, cannot be expreſſed. They are frequently ocaſioned by ſtupid ſluggiſh men, to whom the learning and nduſtry of others in their proper buſineſs is an eye-ſore. For the more learned men are, the further they are removed from a ſpirit of contention. And the ſcufle is carried on with calumnies, libels, and fraudulent arts, by which they hope to bear down their enemy, or render him ſuſpected by his auditors. And hence it comes about, that the hours which ought to be devoted to the education and inſtruction of youth, are conſumed in writing controverſial pamphlets, and that the ſtudents, tho' not capable of judging of the diſpute, and unacquainted with the true nature and riſe of it, are divided into factions; ſo, that from words it not ſeldom comes to blows. But how prejudicial ſuch feuds muſt be to the moſt flouriſhing univerſities, is very manifeſt.

Sect. CLXXXVII.

The right of the chief magiſtrate with reſpect to commerce.

The other right of magiſtracy which remains to be conſidered, is what regards commerce (§ 134). For ſince mankind, far leſs a republic, cannot ſubſiſt without commerce (l. 1. § 325), the governors of a civil ſtate ought to take care to promote and maintain it, and to direct it into a right and proper channel. And therefore they have all the rights relative to it, without which theſe ends cannot be obtained (§ 133); the conſequence of which is, that they can make laws concerning traffic, manufactures, export and import, payment of bills and debts, and about money or coin; give privileges to traders, ſtipulate ſecurity to foreign commerce by treaties, and defend it by arms; grant immunities and rights to larger ſocieties of merchants; and, in general, do every thing neceſſary to ſupport and promote trade, conſiſtent with pacts and treaties made with other princes or ſtates.

* This whole ſubject is well illuſtrated by two diſſertations: one by Jo. Fridr. L. B. Bachovius ab Echt diſſert. de eo quod juſtum eſt circa commercia inter gentes, Jenæ 1730. Another by Jo. Jac. Maſcovius de fœderibus

commerciorum, Lip. 1735. To which, if we add the writings pro and con with regard to the diſputes between the Dutch and the Imperial Netherlands, about the Oſtend Company, we ſhall not need to look further into this ſubject. See Refutation des argumens avancés de la part de Mrs. les Directeurs de Compagnies d' orient & d' occident des provinces-unies, contre la liberté du commerce des habitans des Pais-bas, Hague 1723, and Jo. Barbeyrac Defenſe du droit de la compagnie Hollandoiſe des Indes orientales, contre les nouvelles pretenſions des habitans des Pais-bas Autrichiens.

CHAP. IX.

Concerning the tranſeunt rights of Sovereignty.

Sect. CLXXXVIII.

It is lawful to make war.

BEcauſe all empire is ſupreme and abſolute, (§ 127), it follows, that different empires or civil ſtates are independent, and ſubject to no common authority on earth (§ eodem). But ſuch ſtates are in a ſtate of nature, and therefore in a ſtate of natural equality and liberty (§ 5 & ſeq). And becauſe in ſuch a ſtate the injured have no defence or protection but in themſelves, and therefore in it every one has a right to repel violence and injury, and to extort by force what is due to him by perfect right (§ 9), it is abundantly evident, that every civil ſtate or republic has the right of making war *.

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* This might be proved by other arguments. For nature hath not only endued men, but even brute animals with a principle of ſelf-defence; and hath furniſhed the latter with certain arms to protect themſelves.

Ut, quo quiſque valet ſuſpectos terreat; utque
Imperet hoc natura potens, ſic collige mecum.
Dente lupus; cornu taurus petit. Unde, niſi intus
Monſtratum? Horat. Serm. 2. 1. v. 50.

Many teſtimonies of the ancients to this purpoſe are collected by Grotius, of the rights of war and peace, 1. 2. 1. 4. Again, ſince private perſons living in ſociety have the right of ſelf-defence, when they cannot have recourſe to public protection (lib. 1. § 181), much more muſt it be allowable to a free people to defend themſelves, ſince in a ſtate of nature there is no common magiſtrate to judge between the injurer and the injured, and to defend againſt violence (ibid. § 183). The ancient fathers of the church have brought ſeveral arguments from the ſacred writings againſt the right of war, as Tertullian de idolol. cap. 18. & de corona milit. cap. 11. Origen adv. Celſ. l. 8. p. 425. Eraſmus in milite Chriſtiano, & Adagiorum Chil. 4. Cent. 1. adag. 1. and likewiſe the Anabaptiſts, of whom Arnold. in Hiſt. eccleſ. & hæret. part. 2. l. 16. cap. 21. n. 24. But theſe objections have been ſufficiently anſwered by Grotius in his maſterly way (ibid. § 5. & ſeq.) and by Huber de jur. civ. 3. 4. 4. 6. & ſeq.

Sect. CLXXXIX.

By *war* we underſtand a ſtate in which free and independent men or nations, living in a ſtate of nature, contend in proſecution of their rights by force or ſtratagem, while they retain that intention *. From which definition, it is plain that war does not conſiſt in the act itſelf of contending, but in a hoſtile ſtate, and in the fixed purpoſe of contending; and therefore truce does not belong to a ſtate of peace, but to a ſtate of war; and, on the other hand, the quarrels and tumults, the private or public violences of men who are not their own maſters, but ſubjected to civil government, do not come under the definition of war. What is war.

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* Thus we think it proper to define war, tho' it be otherwiſe defined by others. According to Cicero (off. 1. 11.) all contention by force is war. But Grotius (of the rights of war and peace, 1. 1. 2. 1.) obſerving, that not the act but the ſtate is properly denominated war, amends this definition, by calling war a ſtate of contention by force, as ſuch. Yet becauſe this definition agrees as well to tumults, or private and public violence, as to war, the defi-

nition of Albericus Gentilis (of the rights of war, 1. 2.) is rather preferable. He defines it to be a juſt contention by public arms. But the beſt of all, is the definition given by V. A. Corn. van Bynkerſh. Quæſt. juris publ. 1. 1. which we follow.

Sect. CXC.

To whom the right of war belongs, and in what it conſiſts.

Since war is made by free nations, and men who live in a ſtate of nature (§ 189), the conſequence is, that in the latter caſe the right of war belongs to all promiſcuouſly, as being all equal (§ 5 & 9); but in the former to the ſupreme power only (§ 135); and therefore it is the right of the Sovereign to levy or hire troops *, to build fortreſſes and fortify towns; to raiſe money for the maintenance of an army, to make proviſion of arms, warlike ſtores, ammunition, and other neceſſaries for war; to build, man, and ſtore ſhips, to declare war, wage war againſt an enemy, and thus expoſe ſoldiers to the greateſt danger, and make laws relative to military diſcipline and exerciſe, and ſuch like things. For the end of this right being the external ſecurity of the ſtate (§ 135): becauſe the chief magiſtrate of a ſtate muſt have all the rights, without which that end cannot be obtained (§ 133); every one may eaſily ſee that the right of war muſt make one of them.

* It is well known, that there are three kinds of armies: one when every ſubject bears arms for his country, as in the Grecian republics of old, and among the Romans during their freedom, and as at preſent in Switzerland: another is mercenary, when ſoldiers, even foreigners, are liſted for money; which kind of army Auguſtus, by the advice of Mæcenas, preferred for certain reaſons to the other, Dion. Caſſ. hiſt. lib. 52. p. 482. and which is at preſent preferred by all monarchs, who are not ſecure of the hearts of their people: another is confederate, when republics by alliance, or in conſequence of due homage, are bound to

furniſh a certain quota of forces; ſuch were the auxiliaries furniſhed by the Latins to the Romans: of which kind of armies ſee a curious diſſertation by Herm. Conringius. Concerning hired or mercenary troops, it hath been often queſtioned, whether it be lawful for a prince to keep up ſuch amidſt his well-affected ſubjects. Upon which queſtion, ſee V. A. Corn. van Bynkerſhoek, Quæſt. jur. publ 1. 22.

Sect. CXCI.

Whether an inferior magiſtrate may make war?

From the ſame definition of war, it is evident that an inferior magiſtrate, or the governor of a certain province or fortreſs, cannot make war; tho' that ſuch may defend the towns or provinces under their command and government againſt any aggreſſor whatſoever, on a ſudden attack, even without a ſpecial order, none can doubt; nay, becauſe a province may be ſo remote, that its governor cannot inform the Sovereign of its imminent danger ſpeedily enough to receive proper inſtructions, in this caſe certainly, if the right of making war be given to the governor by a general mandate, there can be no doubt of his right to make war without particular order from his ſuperiors *.

* Hence the war of Cn. Manlius againſt the Gallo-Græci was unjuſt. And for this reaſon, he was refuſed a triumph, Liv. 38. 45. " becauſe, ſays he, he did it without any reaſon, and without the authority of the ſenate, or the command of the people, which none ever had dared to do." And it is known that the ſenate were not far from giving up Julius Cæſar to the Germans, for having made war againſt them without the command of the people, Sueton. Jul. Cæſ. cap. 24. But the governors ſent by the Spaniſh, Portugueſe, Dutch, *&c.* into American provinces, have commonly ſuch full power of making war and peace, that the news of the victory are often the firſt news of the war.

Sect.

Sect. CXCII.

Whether private perſons have the right of war?

Moreover, from this definition we learn that ſingle combats are unlawful, unleſs undertaken by the command of the ſupreme powers *; and therefore Grotius's diſtinction between *private* and *public* war hath no foundation, nor does it quadrate with the definition of war. Much leſs can that be called war which is carried on by citizens againſt one another, and is commonly called *a civil war*. Again, the ſtate of violence and enmity, which pirates and robbers are in with all mankind, as it were, is not a ſtate of war, but of robbery and plunder; and therefore ſuch perſons have not the rights of war, but ought to be puniſhed as diſturbers of the public ſecurity.

* For ſuch kind of ſingle combats were a ſort of repreſentative war, uſed among the ancients, when they choſe perſons out of each army to decide the fate of the war by a ſingle combat, agreeing that the party which had ſucceſs in it, ſhould have the right of victory or conqueſt. Ancient annals are full of ſuch examples. Many of them are gathered together by Grotius, (of the rights, *&c.* 3. 20. 43. & ſeq.) who, however, pronounces ſuch combats unlawful, becauſe no perſon is maſter of his life and members. But ſure, if a Sovereign may expoſe whole armies to an enemy, he may expoſe one or a few perſons. Whether this practice be agreeable to civil prudence, is another queſtion. Of that there is reaſon to doubt, becauſe thus the whole republic is ſubmitted to one chance, nor can they afterwards try their fortune with the remains of their ſtrength, as the Albans felt to their ſad experience, Dionyſ. Halicar. antiq. lib. 3.

Sect. CXCIII.

The juſtifying cauſes of war.

Since war is carried on by free nations (§ 189) in proſecution of their rights, the conſequence is, that there are only two *juſt cauſes of war:* One is, when a foreign people injures another people, or attempts to rob them of their liberty, wealth, or life.

life: the other is, when one people denies another their perfect right *. The firſt is a juſt cauſe of *defenſive* war, the laſt of *offenſive*; and therefore the third, firſt mentioned by Grotius (of the rights of war and peace, 2. 1. 2. 1.) *viz.* the puniſhment of crimes, is not to be admitted as a juſt cauſe of war; the rather, that it is certain an equal cannot be puniſhed by an equal; and therefore one nation cannot be puniſhed by another (§ 157).

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* Nor does the reaſon aſſigned by Grotius prove any thing elſe, ibid. n. 1. " As many ſources as there are of judicial actions, ſo many cauſes may there be of war. For where the methods of juſtice ceaſe, war begins. Now in the law there are actions for injuries not yet done, or for thoſe already committed. For the firſt, when ſecurities are demanded againſt a perſon that has threatened an injury, or for the indemnifying of a loſs that is apprehended, and other things included in the decrees of the ſuperior judge, which prohibited any violence. For the ſecond, that reparation may be made, or puniſhment inflicted; two ſources of obligation, which Plato has judiciouſly diſtinguiſhed. As for reparation, it belongs to what is or was properly our own, from whence real and ſome perſonal actions do ariſe; or to what is properly our due, either by contract, by default, or by law; to which alſo we may refer thoſe things which are ſaid to be due by a ſort of contract, or a ſort of default, from which kind all other perſonal actions are derived. The puniſhment of the injury produces indictments and public judgments." So far Grotius. But as we cannot reaſon from a ſtate of nature to a civil ſtate; ſo no more can we reaſon from a civil ſtate to a ſtate of nature. One nation hurts another, either by its default, or does not hurt any other, *e. g.* if it worſhips idols, or eats human fleſh. In the firſt caſe, the injured people attacks the delinquent people with a juſt and lawful war, not a punitive but a defenſive war. In the laſt caſe, there is abſolutely no right to make war, becauſe none but a ſuperior can puniſh a delinquent.

Sect. CXCIV.

Whether war be juſt on the account of refuſing to render imperfect right?

As the denial of perfect right only is a juſt cauſe of war (§ 193), hence it follows, that it is not allowable to have recourſe to arms for the refuſal of an imperfect right (§ 9); and therefore theſe are not juſt cauſes of war; as, for inſtance, if one refuſes paſſage to an army, or denies acceſs to a people in queſt of a new habitation, will not grant the liberty of commerce to a people at their deſire, or furniſh money, proviſion or ſhelter, to thoſe who are carrying on war, unleſs theſe things be due by an antecedent treaty, or be demanded in extreme neceſſity, or be of ſuch a kind, that they may be granted without any detriment * (§ 9 & ſeq.) For then a refuſal of ſuch things becomes an injury, and is therefore a moſt juſt cauſe of defenſive war (§ 193).

* That rarely happens. For either there is danger from the army that demands liberty to paſs, or from the enemy, who may take it amiſs that paſſage was granted. But if the paſſage be abſolutely without danger, and ſo neceſſary that there is no other way for them who ask it to take, he does an injury who refuſes ſuch paſſage. And to this cauſe we may refer the war waged by the Iſraelites at God's command, Num. xxi. 21, 22. But the Idumeans were not touched for the ſame reaſon, Num. xx. 21. either becauſe that paſſage was not ſo ſafe, or not ſo neceſſary, there being another way to Kadeſh.

Sect. CXCV.

If war may be waged for others?

But it being ſometimes the ſame whether we ourſelves are immediately injured, or we are ſo thro' the ſide of another; and, in like manner the ſame, whether perfect right be denied to us or to others, whom we are obliged, either by treaties, or on our own account, to aſſiſt; hence we may juſtly conclude, that war may be engaged in for allies and confederates; yea, and for neighbours,

bours, if it be very certain that we muſt ſuffer by their ruin. For who will blame one for haſtening to extinguiſh fire near to his own houſe? Who does not conſent to the truth of the antient ſaying, "Your intereſt is at ſtake, if your neighbour's houſe be on fire?" However, ſince we cannot make war even for ourſelves without a juſt cauſe (§ 193), much leſs will a war be juſt and vindicable, if we engage in the behalf of others for injuſtifiable reaſons.

Sect. CXCVI.

Mere colours do not juſtif war.

But tho' theſe juſt cauſes be eaſily diſtinguiſhable from the mere pretexts often uſed by thoſe who make war moſt unjuſtly; yet men, who regard nothing but their own intereſt, often lay more ſtreſs on the latter than the former. However, it is plain, that if theſe cauſes we have mentioned be the only juſtifiable cauſes of war (§ 193), war muſt be very unjuſt, if made merely becauſe opportunity, and the weak, defenceleſs ſtate of another nation invites to it, or purely to gain ſome great advantage, and to extend one's empire, for the glory of martial atchievments, or from religious enmity, without any other juſt cauſe *.

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* And I know not but the cruel wars carried on in the middle ages againſt the Mahometans by Chriſtians, muſt be referred to this claſs: as likewiſe thoſe which the Spaniards dared to undertake againſt the Americans, a nation not inured to war, and that had never done any injury to the Europeans. The former were not coloured over with any other pretext, but that the Holy-land, Jeruſalem chiefly, were poſſeſſed by aliens from the Chriſtian church, and that it was the intereſt of Chriſtians thus to promote and propagate their religion. The latter with this only pretext, that the Americans were impious idolaters, or rather worſhippers of demons. But ſince Chriſtianity does not permit of propagation by force; and neither reaſon nor revelation allows places which appear ſacred to certain men, to be therefore claimed by arms and violence; and ſince beſides all this, all

wars in order to puniſh are unlawful (§ 193), theſe wars muſt needs be pronounced moſt unjuſt. Wherefore, Herm. Conringius ad Lampad. p. 242. ſays very juſtly, "Tho' many things were done in them which deſerve the praiſe of zeal and courage; yet, if we may ſpeak the truth, all theſe expeditions were owing to the weakneſs, imprudence, and ſuperſtition of the Kings and Princes of that age." See likewiſe Jo. Franc. Buddeus, exercitat. de expeditionibus cruciatis, § 5. & ſeq. As to the opinion of the Spaniards, about a right to puniſh the Mexicans for their crimes againſt nature, which Grotius defends (of the rights of war and peace, 2. 20. 40. & ſeq.) it is given up even by the Spaniſh doctors themſelves, Victoria, relat. 1. de Indes. n. 40. Vaſquius controver. illuſt. 1. 25. Azorius, Molina, and others.

Sect. CXCVII.

The diſtinction between ſolemn and leſs ſolemn war is of little uſe.

Many nations have thought that war, ſo ſoon as reſolved upon, ought to be ſolemnly declared; and hence the known diſtinction between *ſolemn* or *juſt*, *leſs ſolemn*, or *unjuſt* war. The former, in the opinion of moſt writers, is that which is undertaken by one who hath the right to make war with a previous ſolemn denunciation. The latter, that which is undertaken by one who hath not the right of war, and is not previouſly declared. But tho' we grant that this is become almoſt an univerſally received rule, and victory is generally thought more glorious, when it is obtained by a war that was previouſly declared by a manifeſto, or by heralds, or with other ſolemn rites; yet, becauſe rites and ſolemnities are arbitrary, and ſuch cuſtoms do not conſtitute a part of the law of nations (l. 1. § 22); * we think there is no difference as to legal effect between war *declared* and *not declared*; and therefore, that this diviſion is of very little moment *.

* Grotius of the rights of war and peace, and Alberic. Gentilis of the rights of war, lay great ſtreſs on this diſtinction, who are followed in this matter by Pufendorff, Huber and others, for a double reaſon. Firſt, becauſe by

ſuch an appeal or declaration, it is made evident, that we cannot otherwiſe obtain what is due to us. And ſecondly, becauſe thus it appears that the war is made by the conſent of the whole body in both nations. But theſe reaſons only prove, that a previous declaration of war is of uſe and laudable, not that it is neceſſary to make a war juſt, becauſe both theſe facts may be evidenced by other means, beſides a ſolemn declaration. Wherefore, Dio. Chryſoſtom. Orat. ad Nicomed. aſſerts with reaſon, and agreeably to the principles of the laws of nations, "Several wars are undertaken without denunciation." But this ſubject hath been exhauſted by Thomaſius ad Huber. de jur. civ. 3. 4. 4. 27. and by V. A. Corn. van Bynker. Quæſt. jur. publici, 1. 2. p. 5. & ſeq. who hath there likewiſe treated of the moſt modern European cuſtoms.

Sect. CXCVIII.

The cauſes of war ought to be maniſeſt.

But right reaſon clearly teaches us, that recourſe ought not to be had immediately to arms; but then only, when a people hath ſhewn a hoſtile diſpoſition againſt us (l. 1. § 183). But ſeeing he ſhews a hoſtile diſpoſition againſt us, who obſtinately rejects all equal terms and conditions of peace (§ eodem); hence we juſtly infer, that before we take violent methods, what is due, or we think is due to us, ought to be demanded, and the diſpute ought to be clearly ſtated with the arguments on both ſides, and all means ought to be tried to prevent war *; which being done, he certainly takes up arms juſtly, who, having propoſed good and adequate reaſons, cannot obtain from his enemy any reaſonable ſatisfaction.

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* Three means are particularly recommended by Grotius, of the rights of war and peace, 2. 23. 7. and Pufendorff of the law of nature and nations, 5. 13. 3. and 8. 6. 3. an interview or friendly conference, reference to arbitrators, and lot. But as for the laſt, beſides that it can rarely have place but when a thing is to be divided, princes and ſtates ſeldom chooſe to ſubmit their fortunes to chance. The other methods are received in all civilized nations, and are moſt agreeable to right reaſon; for no wiſe man will

take a dangerous way to obtain what he may have without force (lib. 1. § 181), ſo true is what the ſoldier in Terence ſays, tho' upon a ridiculous occaſion,

Omnia prius experiri, quam armis, ſapientem decet.
Qui ſcis, an, quæ jubeam, ſine vi faciat?

For this end are theſe public writings called *Manifeſtos* and *Declarations*, tho' the former are more commonly publiſhed at the very point of ſtriking the blow, rather to declare and juſtify the war, than with a view to decline and prevent it. See Jo. Henr. Boecler. exercitat. de clarig. & manifeſtis.

Sect. CXCIX.

What is lawful againſt an enemy.

Seeing princes and free nations make war in order to vindicate their rights (§ 193), the conſequence is, that every thing is lawful againſt an enemy, without which theſe rights cannot be obtained. But they cannot be obtained but by reducing the enemy to ſuch a ſtate, as that he either cannot, or will not any longer ſhew a hoſtile diſpoſition: and therefore every one has a right to uſe force or ſtratagem againſt an enemy, and to employ all means againſt his perſon or effects, by which he can be weakened, without regard even to the offices of humanity, which then ceaſe (l. 1. § 208); nay, we cannot call it abſolutely unjuſt to make uſe of poiſon or aſſaſſines, tho' ſuch practices are with reaſon ſaid to be repugnant to the manners of more civilized nations, and to what is called *(ratio belli)* the humanity of war.

* Grotius (of the rights of war and peace, 3. 4. 15. and 18.) is of a different opinion. But actions, becauſe they are more glorious, and ſhew more greatneſs of mind, are not for that reaſon ſo obligatory, that it is unjuſt not to do them. Poiſon is not uſed by more civilized nations; but the Turks and Tartars poiſon their darts and arrows. We may therefore call them leſs humane on that ſcore, but not unjuſt, becauſe every thing is lawful againſt an enemy. Thus we may juſtly refer to the claſs of greatneſs of mind, what the Roman conſuls are ſaid to have wrote to Pyrrhus,

" We do not chooſe to fight by bribery or by fraud," Gell. Noct. Attic. 3. 8. But we cannot call Ehud unjuſt for killing Eglon, Jud. iv. 20; nor Jael for driving a nail into the temples of Siſera, Jud. iv. 21. or Judith for cutting off Holofernes's head, if the ſtory be true. Beſides, the manners of nations, who pretend to greater politeneſs than others, often degenerate into vile diſſimulation; of which ſee Bynker. Quæſt. jur. publ. 1. 3. p. 17. " To ſuch a height did flattery riſe in the preceding age, and is it at preſent, that princes do not lay it aſide even in war. For now it is common for enemies moſt politely to wiſh one another all proſperity, and to exchange compliments of condoleance. So do the letters of the States General to the King of England run, 10th July, 26th September, and 26th November 1666, and thoſe of the King of England to the States General, 4th Auguſt and 4th October 1666, tho' they were then preparing for deſtroying one the other, yet the ſtates wrote, that the offices of friendſhip might take place amidſt the rights of war, July 10. ep. 1666. So the King of France, tho' he was in war with the King of England in the year 1666, ſent an envoy to condole him upon the burning of London. It is indeed glorious to exerciſe humanity, clemency, and other virtues of a great mind in war, but it is ſilly and abſurd to uſe ſuch unmeaning unſincere words. For what is it but to uſe deceitful falſe words, to regret the burning of a city one would willingly have ſet fire to? Are not theſe rare ſpecimens of humanity? Shall we then pronounce C. Popilius Lænas more unjuſt than thoſe princes and ſtates, who being ſaluted by Antiochus, declared he would not return his ſalute till they were friends; and refuſed the King's hand when he ſtretched it out to him? Polyb. Excerpt. legat. cap. 92. Liv. 45. 12. Theſe are harſher methods, but not unjuſt, yea much more decent than hoſtile adulations and falſe compliments.

Sect. CC.

Whether it be lawful to deceive an enemy by pacts and treaties?

But ſince it is againſt an enemy only that it is lawful to uſe force or ſtratagem (§ 199), the conſequence is, that it is not lawful to uſe either againſt thoſe with whom we are in treaty; becauſe then we pledge our faith to them not as an enemy, but as a people treating with us *. Whence it is evident, that they are guilty of abominable perfidiouſneſs, who break a ſhort or long truce before it is expired; tho' it be very true that both parties may exert defenſive acts during that time, Pufendorff of the law of nature and nations, 8. 7. 10. Nor is their treachery leſs abominable, who baſely violate the articles of ſurrendery, pacts concerning the conveyance of proviſions, or the redemption of priſoners, fooliſhly pretending to juſtify themſelves by this pretext, that all is lawful againſt an enemy.

* Ageſilaus in Plutarch, p. 600, well diſtinguiſhes between an allowable ſtratagem and perfidy. There is there recorded an excellent ſaying of his: "To break the faith of a treaty is to contemn the Gods: but to outwit an enemy is a laudable, and withal a ſaving method." But what if an enemy had formerly proved treacherous and falſe? May we not then render like for like? I think not. For tho' the perfidy of one of the contracting parties exempts the other from his obligation (l. 1. § 413), yet this is to be underſtood of the ſame bilateral pact, the conditions of which are not fulfilled by one of the parties. But if we make a new pact with one who had not ſtood to his former, we are deemed to have paſſed over his former perfidy, and are therefore bound to fulfil our new contract.

Sect. CCI.

What is lawful againſt others not enemies.

From the ſame principle we conclude, that none may uſe the rights of war againſt ſuch as are in peace and friendſhip with them, under the pretext that an enemy may ſeize their caſtles and fortreſſes, or harbours, and make advantage of them againſt us; nor is it lawful to ſeize or hurt enemies or their ſhips in the territory, or within the ports of a people in peace with us, unleſs that people deſignedly gives reception to our enemy, becauſe ſuch violence is injurious to the people with whom we are in peace, whoſe territory or ports are entred by force. See V. A. Corn. van Bynkerſhoek. queſt.

jur. publ. 1. 8. On the other hand, there is no reaſon why we may not hinder ſuch a people from conveying arms, men, proviſions, or any ſuch things to our enemy, and hold ſuch things for contreband *; (Bynkerſ. ibidem, cap. 9. & ſeq.) tho' equity requires that we ſhould not promiſcuouſly condemn the goods belonging to our friends with thoſe belonging to our enemies. (Bynkerſ. 1. 12. & ſeq.). See likewiſe our diſſertation de navibus ob mercium illicitarum vecturam condemnatis.

* This is granted by Grotius, l. 3. cap. 17. § 3. but with a reſtriction. "It is the duty, ſays he, of thoſe that are not engaged in a war, to ſit ſtill and do nothing that may ſtrengthen him that proſecutes an ill cauſe, or to hinder the motions of him that hath juſtice on his ſide." But becauſe a neutral party ought not to take upon them, as it were, to ſit as judges, and determine upon which ſide juſtice lies, but, on the contrary, to take no part in the matter, as Livy obſerves, 35. 48; hence it is evident, that there is no place for this reſtriction. See V. A. Corn. van Bynkerſh. Quæſt. jur. publ. 1. 9. p. 69.

Sect. CCII.

How acquiſitions may be made by war.

We have obſerved, that the perſons and eſtates of enemies may be ſpoiled or taken (§ 199); whence it is plain, that it depends on the will and pleaſure of an enemy to lead perſons taken in war captive into ſervitude, or which is now the prevailing cuſtom in European nations, to detain them till they are exchanged or ranſomed. The effects of enemies, moveable or immoveable, corporeal or incorporeal, fall to the conqueror; moveable, ſo ſoon as they are brought within the conqueror's ſtation; immoveable, and other things, from the moment they are occupied, tho' the poſſeſſion of them be not ſecure, till peace being concluded, treaties about them are tranſacted. But that moveable things, as well as perſons and territories, being retaken, or recovering their antient liberty, have the right of poſtliminy, none can call into doubt *.

* Here many queſtions occur in Grotius, 3. 5. & ſeq. Pufend. 8. 6. 20, as how things taken in war are acquired? whether incorporeal things and actions, *&c*? But ſince all theſe things depend rather upon the cuſtoms of nations than the laws of nations, and many of them may be eaſily decided from the principles already explained, we ſhall not inſiſt upon them. All theſe are handled by V. A. Corn. van Bynkerſhoek Quæſt. jur. public. l. 1. cap. 4. & ſeq. in a maſterly manner.

Sect. CCIII.

What repriſals are.

From the definition of war it is plain, that if there is no controverſy between nations and ſtates themſelves, when we lay hands upon perſons or effects belonging to another republic in peace with us, on the account of juſtice refuſed to any of our ſociety, this cannot be called *war*, but is making *repriſals* *. But ſince this may very probably give riſe to a war, it ought not to be done by any private perſon, but with the approbation of the Sovereign; and it ought to be carried no farther, than to make ſatisfaction to our member to whom juſtice was refuſed.

* This right, ſince ever it hath been practiſed, hath been called *Repriſals*. The ancients not being acquainted with it, there is no word in the Latin language that properly expreſſes it, (Corn. van Bynkerſh. ibidem. 1. 24.) Grotius derives this right from the right of taking pawn, competent to every perſon (of the rights of war and peace, 3. 2. 7. 3.); and ſo likewiſe Bodinus de republica, 1. 10. But this opinion is refuted by Hertius ad Puſendorff, 8. 6. 13; and before him by Ziegler de jure majeſtatis, 1. 34. 8. where he aſſerts, § 32. that this right proceeds rather from the rights of war. And certainly, if a republic may juſtly vindicate by war an injury done to it and its members (l. 1. § 245), it may likewiſe lay its hands on the goods of others, for an injury done to any one of its ſubjects, unleſs the greater and not the leſs may be allowable.

Sect. CCIV.

How empire is acquired over the conquered.

But ſince in a ſtate of nature the right of defence laſts while an enemy ſhews a hoſtile diſpoſition (l. 1. § 183), which he cannot be ſaid to have laid aſide, who is not willing to return into friendſhip, but repels all reaſonable conditions of peace, (ibidem) no injuſtice certainly is done to the conquered, if we proſecute our right till they are fully ſubdued, and we have obtained compleat empire over them; and we may conſtitute this empire as we judge proper, and exerciſe it, till peace being concluded, ſome articles are agreed upon with relation to it; or the nation not being totally overthrown, and no treaty being yet made, recovers its antient liberty, or is bravely reſcued by their former Sovereign *.

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* And then in both theſe caſes, it is moſt equal that recovered towns, cities, provinces, nations, ſhould have the right of poſtliminy (§ 202), and thus recover their former rights, if their falling into the enemy's hands was not by their own fault, or even if it be not very clear, that they could have made a longer or ſtronger oppoſition to the enemy. Hence, when the French Gariſons having left the country, a diſpute aroſe between the ſtates of Utrecht and Friezeland about the right of precedency, upon pretext that the former had given themſelves up without reſiſtance, yet the province of Utrecht recovered its former place and ſtate, Huber. Prelect. ad Dig. l. 49. tit. 15. § 9. But the caſe would be quite different, if a city or province, which, unmindful of their faith to their Sovereign, had wilfully deſerted and gone over to the enemy, ſhould afterwards be recovered by war. For ſuch would be juſtly deemed unworthy of this benefit, and therefore it is in the conqueror's power and right to reduce them into any condition he pleaſes. Such examples did the Romans make of the Brutii, Lucani and Campani, who deſerted to Hannibal; of Capua chiefly, which city was ſo far from having its ancient rights reſtored to it, that it was deprived of its municipal privileges, its right of magiſtracy,

ſtracy, and its territories, and reduced into the form of a province, Liv. 26. 16. & ſeq.

Sect. CCV.

What a treaty is, equal or unequal.

Another right of majeſty, which may be reckoned among the external or tranſeunt ones, is that *of making treaties* among free nations about things belonging to the utility of both, or any of them. From which definition it is plain, that ſome of them are *equal*, in which the condition of both parties are equal; others are *unequal*, in which both parties have not the ſame rights granted to them, but one has better, and the other worſe conditions; which, as examples ſhew us, may be either with regard to the conditions to be fulfilled, or to the manner of performing them *.

* Thus one of the confederate parties being ſtronger, engages to furniſh the other not ſo powerful, a certain pecuniary ſubſidy, or a certain quota of ſhips, troops, or marines, and ſtipulates little or nothing to itſelf. In this caſe the treaty or alliance is unequal, in reſpect of the things to be done. But it is often provided by treaties, that one republic ſhall be bound to pay homage to another; not to undertake war without another's conſent; not to keep a fleet; to pay an annual tribute; to make uſe of no iron or iron-ſmiths, except for agriculture, 1 Sam. xiii. 19, 20. which Pliny, hiſt. nat. 34. 14. ſays was done in the firſt treaty of Porſena with the Roman people. All theſe are unequal treaties with reſpect to the manner of doing, ſince the one makes itſelf the other's client by this manner of treating.

Sect. CCVI.

Treaties are either matters of ſimple general friendſhip, or which oblige to ſomething in particular.

Becauſe free nations can contract about things relating either to the utility of either or of both, (§ 205), it follows, that thoſe good offices which are owing by natural obligation, may be ſtipulated to themſelves by free nations or ſtates; and theſe are called *leagues of friendſhip* *. And other things may be ſtipulated, to which there was no prior obligation; which treaties we call *treaties of particular obligation.* The firſt are not unneceſſary, becauſe there is no other way of ſecuring another's performance to us of the duties of humanity, but by pacts (l. 1. § 386). And it often happens, that war puts an end to all the duties of humanity (§ 199), and therefore it is abſolutely neceſſary that friendſhip ſhould be renewed by pacts and covenants.

* To theſe treaties Grotius (of the rights of war and peace, 2. 15. 5. 3.) refers leagues which provide for the entertainment of ſtrangers, and the freedom of commerce on both ſides, as agreeable to the law of nature. But ſince the law of hoſpitality comprehends many good offices, which are not perfectly due by the law of nature alone (of which Jo. Schilterus has treated very accurately), and ſince the permiſſion of commerce with foreigners depends upon the will of the ſupreme powers in every ſtate (§ 187), ſuch leagues can hardly in any caſe be referred to thoſe, by which one nation ſtipulates to itſelf from another nothing more than is due by the law of nature. As to leagues of commerce, that there is not ſo much difficulty about any others as about them, is proved by Jo. Jac. Maſcou. diſſert. de fœder. commerc. § 6. by an example from Jac. Baſnag's Hiſt. Belg. tom. 1. p. 51. and 439. And the Athenians, Smyrnians, and other republics, ſtruck medals to be monuments of ſuch treaties, as the ſame author has ſhewn from Ezek. Spanheim. de uſu & præſtantia numiſmatum, diſſ. 3. p. 143. & diſſert. 13. n. 4. as likewiſe in his Orbe Rom. cap. 4. and from Vaillant de numis imp. Græc. p. 221. But who ever thought a ſimple league of mere friendſhip worthy of being commemorated by ſuch monuments?

Sect. CCVII.

Some treaties are made in time of peace.

A thing may be uſeful to a ſtate either in peace or war, and therefore ſome treaties relate to *peace,* and others to *war*; but it being the intereſt of a ſtate, that peace be rendered as durable and ſtable as poſſible, and as profitable to its ſubjects as may be, we may refer to the firſt end, treaties by which certain guarantees engage their faith, that the articles of peace ſhall be faithfully obſerved, and promiſe aſſiſtance to the injured party *; as likewiſe treaties about building new fortifications, or for admitting and keeping gariſons in certain fortified places, for defending frontiers, commonly called *barrier-treaties*; for not ſheltering fugitive ſoldiers or ſubjects; or not giving reception to enemies, *&c.* to the latter of the above mentioned ends we may refer treaties of commerce.

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* Upon theſe treaties it is worth while to conſult Ulr. Obrecht. diſſ. de ſponſore pacis, the ſeventh of his Academic diſſertations, and Henr. Cocceii de guarantia pacis, Franckfort 1702. The principal queſtion that is moved on this ſubject is, whether the guarantees of a peace be obliged in general to enter into a war-alliance with the injured party, for any breach of peace whatſoever? But Pufendorff (of the law of nature and nations, 8. 8. 7.) has juſtly denied that the guarantees are bound to ſend aids in any war that takes its riſe from other reaſons than the violation of the articles of peace of which they are guarantees. For as it would be abſurd for a creditor to demand a debt from a ſurety, contracted by the principal debtor after the ſuretiſhip; ſo it would be no leſs unjuſt for a prince or a ſtate to demand that a guarantee ſhould take up arms in his defence, if the war takes its riſe from ſome new cauſe. For a guarantee is only bound, when the peace of which he was ſurety is broken. But peace (as Grotius has well obſerved, 3. 20. 27. & ſeq.) is broken, if any thing be done contrary to what is included in every treaty of peace, or may be inferred from the very nature of peace in general, or to the expreſs articles of a particular peace. And the matter is clear enough in general theory; yet when the queſtion comes to be, whether a particular deed be a violation of a certain treaty of peace; it is not ſo eaſily determined, as very recent examples abundantly prove.

Sect. CCVIII.

Some treaties are made in time of war.

But in time of war various treaties are made by free nations with *friends* and *enemies*. With the former, treaties are made ſometimes about joining their forces againſt a common enemy, which are called *offenſive* and *defenſive treaties*; ſometimes about free paſſage through a territory, and furniſhing proviſions; and ſometimes about not interpoſing in the war, which laſt are called *treaties of neutrality*. With the latter, treaties are made, ſometimes about paying tributes, ſometimes about giving up certain towns, ſometimes about the redemption or exchange of priſoners, which are called *Cartels*. (Of theſe Hertius has expreſly handled in his diſſ. de lytro) and ſometimes about a truce of hours, days, or months *, and other like matters.

* Here it is uſually asked, when that time commences? Grotius 3. 21. 5. inſiſts that the day from which the meaſure of the time is to commence, is not included within that meaſure or compaſs of time: but he is ſolidly refuted by Puſendorff of the law of nature and nations, 8. 7. 8. And therefore, if for inſtance, it ſhould be agreed that there ſhall be a truce from the firſt of July to the firſt of September, both theſe days are included; and in like manner, if from the firſt of June for thirty days, the firſt day of June is the firſt day of the truce, and the thirtieth day is the laſt day of it, ſo that the day after it is lawful to take arms.

Sect. CCIX.

Some are perſonal, and others are real.

Beſides, that intereſt, for which treaties are made, either reſpects the perſon of the Sovereign only, or the ſtate itſelf. For which reaſon, ſome treaties are *perſonal*, and others *real*; and the former expire with the perſons; the latter continue after both the contracting Sovereigns are extinct. Now, from theſe definitions it is plain, that all treaties for the conſervation of a prince or his family are perſonal, and thoſe relating to the utility of a ſtate itſelf are real *. And to this diviſion may all thoſe of Puſendorff (of the law of nature and nations, 8. 9. 6.) be moſt conveniently referred.

* This queſtion aroſe when the Romans changed their regal government. For the Sabines having contracted with

their Kings, upon the change of the government they declared war againſt the Romans, pretending that the Roman people, in a popular ſtate, had no right to the advantage of treaties made with their Kings, Dionyſ. Halicarn. Antiq. l. 5. p. 307. In the year from the foundation of Rome 267, the Hernici had recourſe to the ſame plea, denying that they had ever made any treaty with the people of Rome, and aſſerting that their treaty made with Tarquin had ceaſed, becauſe he being dethroned had died in exile, Dionyſ. Hal. 8. p. 530. But both theſe nations having made a treaty upon their being conquered by the Roman arms (See Dionyſ. ib. l. 4. p. 252. & ſeq.) it is indiſputable that they had not contracted with Tarquin only, but with the Roman ſtate, and therefore their treaties continued obligatory even after his expulſion.

Sect. CCX.

Whether treaties may include, or be beneficial to allies?

What is advantageous to a ſtate is likewiſe advantageous to its allies and confederates; and therefore we may conſult not only our own intereſt, but that of our allies likewiſe, in treaties; and that either by mentioning them in general, or ſpecially and particularly. And here it is plain from the nature of the thing, that in the laſt caſe, the treaty cannot be extended to any others but thoſe mentioned in the articles. But in the firſt caſe, it extends to all our allies at the time the treaty was made; but not to ſuch allies as joined themſelves to us afterwards *; becauſe pacts cannot be extended to comprehend things not thought of when they were entered into (lib. 1. § 393).

* This queſtion really happened when Hannibal beſieged Saguntum. For the Romans complained that Hannibal had unjuſtly attacked them, becauſe the Carthaginians were bound by their treaty with the Romans not to annoy their allies. The Carthaginians inſiſted, on the other hand, that the Saguntini were not comprehended in their treaty, becauſe they were not allies to the Romans at the time it was made, Polyb. hiſt. 3. 29. Liv. 21. 19. But tho' both theſe authors take the part of the Romans, I do not heſitate to ſay with Grotius, 2. 16. 13. that this treaty

could not hinder the Carthaginians from making war againſt the Saguntines, and yet the Romans had a right to make new allies, and to defend them againſt the Carthaginians. For the Romans had not in the treaty made any proviſion for their future allies, and could not oblige the Carthaginians to underſtand as comprehended in the treaty things not thought of in making it; nor did the Carthaginians ſtipulate to themſelves from the Romans, that they ſhould make no new allies; and therefore they had no right to object againſt their defending their new allies.

Sect. CCXI.

What may be done by ſponſion?

Moreover, becauſe a league is a convention between free nations or ſtates, it is plain (§ 205), that none can make leagues but thoſe who have a commiſſion to do it, either expreſly, tacitely or preſumptively. And therefore, what miniſters of a Sovereign have promiſed without a commiſſion from him, if it be not afterwards ratified, comes under the denomination of *ſponſion*, and not of *league*. Now, hence it is evident that a republic is not bound to ratify a pact made without their order; but it is certain, on the other hand, that a miniſter who contracts with a ſtate is obliged to make ſatisfaction to that ſtate, which by the fecial law of the Romans, conſiſted in giving him up naked with his hands tied behind his back *. And it is no leſs certain, that the exception againſt a treaty for want of a commiſſion to the miniſter, is for the moſt part a cavil, ſeeing a republic who gives the command of an army or province to a miniſter with full powers, is juſtly deemed to have given him all the power, without which an army or province, nay, the republic itſelf, cannot be ſecure.

* There are two remarkable inſtances of this in the Roman hiſtory, the *Sponſio Candina & Numantina*, Liv. 9. 8. & ſeq. and 55. 15. The Romans would not ſtand to the treaty by which Poſthumius Coſſ. and the other Generals had extricated the army at the Furculæ Caudinæ, nor to that of Hoſtilius Mancinus with the Numantines, pretending

tending that both were done without their orders. But who can doubt but Generals, when an army is in danger, have all the power neceſſary to deliver them from it, and which the ſafety of the army and the ſtate requires. Such ſponſions ought therefore either to have been confirmed, or things ought to have returned to the poſture they were in before the ſponſions, if the Romans had not been more ingenious in deviſing cavils, than faithful in obſerving their treaties. See Chriſt. Thomaſius and G. Beyerus de ſponſionibus Numantina & Caud.

Sect. CCXII.

If it be lawful to make treaties with infidels.

Becauſe treaties are made by free nations (§ 205); it is plain that it makes no difference, whether a people profeſs the ſame religion we do, or one which we look upon as impious and abominable: for as a private perſon may lawfully contract or bargain with one of a different religion; ſo neither a republic nor its rulers ought to be blamed if they make uſeful treaties for their people with infidels; and that revelation hath made no alteration with reſpect to this natural truth, Grotius has fully demonſtrated (of the rights of war and peace, 2. 15. 9. & ſeq.)

* Thus before the Moſaic law was given, Abraham and Iſaac made a covenant with Abimelech, and Jacob with Laban, who moſt certainly worſhipped idols, Gen. xxi. 22. xxvi. 26. xxxi. 44. And after the law of Moſes was given, we know David and Solomon made leagues with Hierom King of the Tyrians, 2 Sam. v. 11. 1 Kings v. 12. We likewiſe read in the ſacred records, of the alliances of Abraham with Eſcol and Aner, Gen. xiv. 13. of David with Achiſh King of the Philiſtines, 1 Sam. xxvii. 2. & ſeq. and with Toi King of Hemath, 2 Sam. viii. 10. of Aſa with Benhadad, 1 Kings xv. 18. & ſeq. The objections brought from Scripture are anſwered by Grotius.

Sect. CCXIII.

Duties with reſpect to treaties.

Moreover, ſince treaties are conventions (§ 205); the conſequence is, that all we have ſaid above of pacts, takes place likewiſe in treaties. So that nothing ought to be held more ſacred than treaties, nor nothing more deteſtable that the perfidiouſneſs of treaty-breakers. Yet becauſe no ſociety is obliged to prefer another's intereſt to its own (§ 22), a republic cannot be obliged by an alliance or treaty to aſſiſt another, if its own condition doth not permit; as, *e. g.* if it be overwhelmed in war, or be in any imminent danger *; nor is a republic ever obliged to engage in an unjuſt war for its allies.

* But this is to be underſtood, not of pretended but real danger. For that falſe pretexts are uſed by Sovereigns, as well as by private perſons, is daily complained. And the excuſes and delays of friends are elegantly repreſented by Æſop in the fable of the Lark in Aulus Gellius Noct. Attic. 2. 29. who there adviſes every one to place his chief dependence on himſelf, and not on his friends or allies, who often promiſe mountains of gold, and do nothing. This is likewiſe the counſel of Ennius in his Satires, preſerved to us by the ſame Gellius.

Hoc erit tibi argumentum, ſemper in promtu ſitum :
Ne quid exſpectes amicos, quod tute agere poſſis.

Sect. CCXIV.

The right of Sovereigns with regard to peace.

So far have we treated of leagues in general, the nobleſt of which undoubtedly is that pact by which an end is put to war among free nations, commonly called *a treaty of peace*. But peace being the ordinary ſtate of a republic, and, as it were, its natural ſtate; and war being its extraordinary and preternatural ſtate, it is evident, that Sovereigns are obliged to maintain peace, and to reſtore it, if it be interrupted; and conſequently that theſe are ſavage wars, which are carried on, not with a view to peace, which is *better than a thouſand million of triumphs.*

Sect. CCXV.

What a treaty of peace is.

By *a treaty of peace* we underſtand a convention between free nations involved in war, by which their quarrels are accommodated by way of tranſaction. From which definition it is plain, that peace, in its own nature, ought to be perpetual; and therefore, if it be made for a certain time only, however long, it is not properly peace, but a truce*; becauſe the quarrel which engaged the nations in war is thus not ended, but the deſign of diſputing it by arms ſtill ſubſiſts; which ſtate, as we obſerved, is a ſtate of war, and not of peace, (§ 189).

* And yet ſuch truces not unfrequently are called *peace*, becauſe not only all hoſtile acts ceaſe, but even a ſtate of war ceaſes, as if the contending parties had laid aſide their hoſtile intentions. Thus we are told by hiſtorians, that the Lacedemonians made peace for fifty years; the Romans for a hundred years, Juſtin. hiſt. 3. 7. Livy. 1. 15. Sozom. hiſt. eccleſ. 9. 4. And we have more recent examples of ſuch truces between Spain and Portugal, Sweden and Denmark, England and Scotland, Venice and the Turks, who ſeldom make peace with Chriſtians, but for a limited period of time. See Pufendorff 8. 7. 4. & ibidem Hertius, p. 1249.

Sect. CCXVI.

If the exception of inequality be valid.

Peace being made by way of tranſaction (§ 215), the conſequence is, that it may be made giving, retaining, or promiſing ſomething; and therefore, that equality in its articles is not requiſite; nor can either of the parties juſtly complain of being wronged, however enormous the wrong may be; ſince the conqueror may impoſe any terms, and the conquered may prefer any terms never ſo hard to periſhing*.

* Provided it be evident, from the articles of the peace, that the conquered ſubmitted to theſe terms. For if by

malitious cavil, invidious interpretation, or by open force, harder terms are obtruded on the conquered than they conſented to, they have juſt reaſon to complain that they are injured. Thus Q. Fabius Labeo egregiouſly cavilled, when Antiochus having promiſed to deliver up to him the half of his navy, he ordered all his ſhips to be cut in two, and thus ruined his whole fleet, Valer. Maxim. 7. 3. which piece of falſe cunning he had perhaps learned from the Campani, who, as Polyænus Stratag. 6. 15. tells us, had thus deſtroyed the arms of their enemies, one half of which was to be ſurrendered to them by treaty. And how deteſtable was the open force with which the Galli Senones inſulted the Romans, with whom, tho' conquered by them, they had tranſacted, obliging themſelves to pay them a thouſand pound weight of gold, when they not only brought falſe weights, but put a ſword into the ſcale with the gold, ſaying inſolently, *væ victis eſſe*, Liv. 5. 48.

Sect. CCXVII.

Nor the exception of force or fear.

Much leſs can an exception of fear or force be oppoſed to a treaty of peace; for this exception never takes place when one has a right to force another (l. 1. § 108). But war is as juſt a way of forcing among independent free nations, as the authority of a judge in a civil ſtate (§ 9); nor is it to any purpoſe to ſay that the war was unjuſt, and therefore that the victor uſed unjuſt violence in extorting hard conditions from the conquered. For beſides, that neither of the parties engaged in war hath a right to make himſelf judge in his own cauſe, and determine concerning the juſtice of the war, the conquered, by tranſacting with the conqueror, remits that injury, and conſents to the amneſty included in all ſuch treaties *.

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* And hence we may ſee what ought to be anſwered to Pufendorff, who maintains againſt Grotius, that this exception takes place. See Grotius l. 2. cap. 17. § 20. & lib. 3. cap. 18. § 11. and Pufendorff of the law of nature and nations, 8. 8. 1. For theſe are two very different things, *viz.* to oppoſe an exception of fear, and to renew the war becauſe the conquering party had taken occaſion

to do ſomething contrary to the articles of peace. In the latter caſe we readily grant there is a juſt reaſon for war (§ 117); but we deny that the firſt is valid. But theſe two are not ſufficiently diſtinguiſhed by Pufendorff, as is plain from the example he brings. Polyb. hiſt. 3. 30. asks whether the Carthaginians had juſt reaſons for their declaring the ſecond punic war againſt the Romans? And he thinks they had, on this account, that the opportunity the Carthaginians took to revenge themſelves, was of the ſame kind with that the Romans had taken to injure them; which is the ſame as if he had ſaid, that the Carthaginians might juſtly plead the exception of fear, becauſe, while they were embroiled in troubles and confuſions at home, the Romans had forced them to give up Sardinia, and extorted a vaſt ſum of money from them. But tho' in the articles of peace between the Romans and the Carthaginians, nothing was tranſacted concerning Sardinia, yet the Romans acted unjuſtly, and contrary to their treaty of peace, in taking advantage of the confuſions the Carthaginians were involved in at home, to make themſelves maſters of Sardinia, as Polybius himſelf acknowledges, 1. 88. And therefore the Carthaginians did not object an exception of fear againſt the treaty of peace which put a period to the firſt punic war, but they complained that this treaty was broken by the Romans, by their taking occaſion from their diſtreſs to force them to give up Sardinia.

Sect. CCXVIII.

If peace ought to be kept with rebellious ſubjects?

Grotius 3. 19. 6. and Pufendorff of the law of nature and nations, 8. 8. 2. aſk whether a commonwealth or government is obliged to obſerve a treaty of peace made with rebellious ſubjects? And they juſtly affirm it ought, againſt Boxhornius, inſtit. polit. 1. 14. 19. and Lipſius. For peace is made by way of tranſaction (§ 215); but he who tranſacts with one who had injured him, is deemed to have remitted the injury done to him. And therefore Sovereigns, by making a treaty of peace with rebellious ſubjects, give an indemnity to them for their rebellion; and thus this peace cannot be broken without injuſtice, unleſs for a new cauſe; except it was not valid from the beginning, either on account of ſome fraud on the part of the rebels, or of the ſtate of the prince who made the treaty.

* Thus in the year 1488, the people of Bruges having invited Maximilian I. to their city, forced him by an unparalleled treachery to a very ſhameful pact with them: But ſo far was the Emperor Frederick, from ratifying it, that in a convention of the nobles at Mechlin, it was decreed that Maximilian was not bound by theſe promiſes, Jo. Joach. Muller Reichs-tags-Theatr. in Maximilian I. act. 1. cap. 8. And ſurely the people having by knavery and unjuſt force made a priſoner of the King till he ſhould promiſe whatever they were pleaſed to demand of him; ſuch an extorted promiſe was no more binding upon him than the promiſe a robber on the highway forces from one.

Sect. CCXIX.

The obligations of the contractors, mediators, and ſponſors.

Beſides, as other treaties, ſo thoſe of peace ought to be (§213) muſt religiouſly obſerved; and therefore the time within which articles ought to be fulfilled, muſt be ſtrictly obſerved, and delays cannot be eaſily excuſed. See Grotius 3. 20. 25. It is likewiſe evident to every one, that *mediators*, who undertake the office of making peace, and *guarantees*, who anſwer, as it were, for the contractors, are obliged, by pact, to the contracting parties *; becauſe, having undertaken the buſineſs, they oblige themſelves to whatever it requires. Whence we conclude, that it is the duty of mediators not to favour one party more than another, but to judge impartially of the cauſe on both ſides, and to perſuade each to what is moſt equal and advantageous; and the duty of guarantees to uſe their utmoſt endeavours that the articles of the treaty be fulfilled on both ſides, and to aſſiſt the injured party by their advice and aids, and with forces, if promiſed.

* The ſame is to be ſaid of hoſtages, *i. e.* perſons pledged for the faith of a ſtate, whether they voluntarily offered themſelves, or they were given up as ſuch by the ſupreme power in a ſtate. Grotius of the rights of war

and peace, 3. 4. 14. In the former caſe they are bound by their own conſent; in the latter, by the convention between their ſovereign and the other ſtate with whom the peace is made. Whence it is plain, 1. That hoſtages may not fly. Nor, 2. a republic receive them by the right of poſtliminy. Therefore, when Clœlia being a hoſtage, fled, Porſena demanded that the hoſtage might be ſent back, threatening to hold the treaty as broken if it was not, and the Romans acted juſtly in delivering back this pledge of their treaty. 3. That hoſtages ought not to be treated as ſlaves, or even as priſoners of war. And therefore, 4. That their eſtates cannot be confiſcated as perſons incapable of teſtating, tho' this was the old rigid Roman law, l. 31. D. de jure fiſci. 5. That their obligation expires with their perſons; and therefore, that when one hoſtage dies, ranſom only is due for the other. 6. But if the treaty of peace be broken, the hoſtages may be kept in chains, and ſpoiled of their liberty and effects, tho' it be very hard, to kill them, if the treaty be violated without any fault of theirs. But of all this ſee Grotius of the rights of war and peace, 3. 20. 52. & ſeq. Pufendorff of the law of nature and nations, 8. 8. 6. and Schilter. opuſculum ſingulare de jure obſidum.

Sect. CCXX.

The right of ſending ambaſſadors, and their ſacredneſs.

Sovereigns having the right of making leagues and peace with enemies (§ 135), which cannot be done without employing agents or meſſengers; the conſequence is, that they are allowed to have the right of ſending ambaſſadors. Now, ſince he who receives another's ambaſſadors, by that very deed is deemed to promiſe them a ſafe admiſſion and exit (l. 1. § 391); the conſequence is, that ambaſſadors ought to be held ſacred amongſt enemies, and not only as exeemed from the juriſdiction of him to whom they are ſent (of which V. A. Corn. van. Bynkerſh. hath admirably diſcourſed in his treatiſe *de foro legatorum*); but as having the right of ſaying, writing, and acting whatever they are ordered by their conſtituent republics or Sovereigns, to ſpeak, write, or do, provided they ſhew no hoſtile diſpoſition againſt the ſtate to which they are ſent *.

Sect. CCXXI.

Different cuſtoms of nations with regard to ambaſſadors.

Other matters relating to ambaſſadors, which are treated of at great length by Marſelarius, Wicquefort, and others, may either be eaſily deduced from the preceding principles, or belong to the cuſtoms of nations, and not to the laws of nature and nations; ſuch as the juriſdiction of an ambaſſador over his own family, his rights with regard to the exerciſe of his religion in his family, his immunities, his right of giving protection, and the ſolemnities of his reception, entry, and taking leave; his titles and honours, and the forms of audience; and the different orders and degrees of ambaſſadors, their titles of honour, precedency, and many other ſuch like queſtions; as likewiſe concerning what is become now univerſal uſage, the inviolability of trumpeters, drummers, and heralds (as among the Greeks of old) of whom Homer often makes mention (odyſſ. 10. v. 59. & 102. & 19. v. 294. and Iliad 10. v. 14. & 178). But upon theſe matters it does not concern us to dwell.

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* If there are evident proofs of this hoſtile diſpoſition, neither a prince nor a republic is obliged to receive an ambaſſador, and may command him to get out of their territories, as is uſually done when war begins to rekindle between two ſtates, the treaty of peace being broken: For we are not obliged to admit an enemy into our boſom or houſe, and therefore not his miniſter or commiſſioner.

CHAP. X.

Of the duties of ſubjects.

Sect. CCXXII.

The duties of ſubjects ſpecial and general.

HItherto we have treated of the rights of the ſupreme magiſtrate both within and without his dominions. Let us now enquire into the *duties of ſubjects*; but all of them may be ſo eaſily deduced from the rights of Sovereigns as correlates to them, (l. 1. § 7), that we ſhall quickly diſpatch them. For as ſubjects may be conſidered either as members or parts of the ſtate entruſted to them, or as their ſubjects, their *duties* are either *general* or *ſpecial*; the former of which ariſe from the common obligation they lie under to the ſovereign power; the latter, from their particular ſtations in the ſtate.

Sect. CCXXIII.

The general duties towards the ſtate.

Their *general duties* are either owing to the ſtate itſelf, or to the ſupreme power in it, or to their fellow ſubjects and citizens. But ſince the whole ſtate is one ſociety, and every member of a ſociety is bound to adjuſt his actions to the common end of the ſociety (§ 21); it follows, that nothing ought to be dearer or more ſacred to a ſubject than the ſecurity and public welfare of his ſtate; that he ought to prefer its good to his life and all the advantages of life *, and to promote it by every juſt and honeſt method.

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* And this is that obligation to one's country, which ſome ancients carried to ſuch a height, that they ſaid, it comprehended in it all the other branches of benevolence, and that none ought to heſitate about ſacrificing his life for his country, when its good called for it at his hands. Cicero in his offices, 1. 17. 3. 23. The ancient ſaying,

" Dulce eſt pro patria mori," is in every one's mouth. But Jo. Clericus, in his examination of this maxim, Ars Critica, 2. 2. 5. 16. ſays, " Men rarely know what they mean by the word *country*. And in reality, ſays he, what was it an Athenian or a Roman called his country? If by it was underſtood the ſoil of Italy or Attica, there is no more reaſon why it ſhould be a more glorious thing to die for it, than to die for that of Africa or Aſia. For the ſoil in which one is born no more belongs to him, than the ſoil upon which he may live conveniently: It is therefore fooliſh to prefer dying in a country lying to the eaſt or weſt, to living in another that lies to the ſouth or north. If by it was underſtood the inhabitants, what were the Athenian and Roman republics but ſocieties of robbers, if we look narrowly into the matter? And therefore, he who died for them was a robber, and ſacrificed his vile life for a band of thieves." But all this is very empty ſtuff, of which we may juſtly ſay,

Nil intra eſt oleam, nil extra eſt in nuce duri.

For by one's country is meant not a ſpot of ground, nor yet a ſet of men among whom there may be many knaves and fools, but that civil conſtitution which connects our happineſs and ſafety with that of the whole ſtate: And certainly, it is better to die than to ſee that ſociety diſſolved, upon which our liberty, dignity, and all our happineſs depends. The prophet Jeremiah philoſophizes in a very different manner from Mr. le Clerc, Jeremiah xxix. 7. " And ſeek the peace of the city, whither I have cauſed you to be carried away captive, and pray unto the Lord for it, for in the peace thereof you ſhall have peace." Might not theſe captives have ſaid, Why ſhould we be more concerned about this ſoil than any other? Why ſhould we pray for ſo many robbers, idolaters, for ſo many impure and wicked perſons, with which this city of Babylon is filled? But God does not command them to be concerned about the Babylonian ſoil, nor its inhabitants, but about the republic, upon the ſafety of which their ſafety depended. " In the peace thereof ſhall ye have peace."

Sect. CCXXIV.

Towards the ſupreme power.

Again, becauſe the life of a *republic* conſiſts, as it were, in this, that all the ſubjects ſubmit their wills to the will of the ſupreme power (§ 114); the conſequence is, that ſubjects are obliged to pay to the ſupreme magiſtrate, as to their ſuperior, a love of veneration and obedience * (l. 1. § 86). And ſince they are likewiſe bound by pact, it is evident that they are bound to fidelity, and that it is incumbent upon them not to be factious, and thus diſturb the ſtate by their feuds and animoſities, but to pay allegiance to their rulers, and not to hurt them by word or deed, but to hold them ſacred, and to render dutiful obedience to all their laws and orders.

* And that not only internal but external, which conſiſts in giving them certain titles, and paying them certain honours, according to the cuſtom of the ſtate. Thus, among the Perſians the ſubjects were obliged to call their Kings Βασιλεας Βασιλεων, and to ſalute them with this acclamation *vivas æternum*, and other ſuch like. Of other titles of honour and geſtures of reſpect, many have treated, as Becman Notitia dignitatum, diſſ. 6. But tho' Sovereigns may juſtly require certain titles and ceremonies of honour and reſpect from their ſubjects; yet there is no reaſon why ſtrangers ſhould be forced to pay them, as the ambaſſadors of other princes or republics, who do their duty if they render reverence to a foreign prince according to the received manner and cuſtom of their own nation. See Corn. Nep. Conon, cap. 3.

Sect. CCXXV.

Towards fellow ſubjects.

Beſides, it being the duty of fellow ſubjects to live together, as the common end of their ſociety requires; they are certainly obliged to love one another, to live peaceably together, and not only to render juſtice one to another, but likewiſe to be more humane towards one another than to ſtrangers. In fine, not to be invidious, or calumniators; not to envy thoſe whom either birth, the benevolence of the prince, or merit has raiſed to greater dignities *; thoſe who excel in any virtue, or thoſe to whom providence hath been more favourable with reſpect to their outward circumſtances or fortunes.

* This is the vice to which democracies are exceeding liable; for ſuch governments can neither bear with vices, nor brook more eminent virtues. Hence that horrible decree of the Epheſini, on account of which Heraclitus pronounced them all worthy of dying in the prime of life. "Let none of our citizens excel others in merit; if he does, let him live elſewhere and with others." (Diogenes Laert. 9. 2.) How many eminent men ſuffered at Athens by their oſtraciſm is well known. See Corn. Nep. Themiſtocles, cap. 8. Ariſtides cap. 1. Cimon. cap. 3. and Sigonius de Republ. Athenienſium. 2. 4.

Sect. CCXXVI.

The foundation of the ſpecial duties of ſubjects.

All the *ſpecial* duties of ſubjects flow from the ends of the particular ſtation of each in the republic; and therefore they are all obliged to do, every one, what the end of his ſtation requires; and not to do any thing that is repugnant to its end; and moreover, not to deſire any offices for which they are not equal. From which few rules, one may eaſily perceive what muſt be the duties of generals, counſellors, ambaſſadors, treaſurers, magiſtrates, judges, miniſters of the church, profeſſors and doctors in univerſities, ſoldiers, &c. *

* It is not therefore neceſſary to ſpeak more fully of the ſpecial duties belonging to every ſtation. Of thoſe Pufendorff of the duties of a man and a citizen, 2. 18. 7. has treated at large, and may be conſulted.

Sect. CCXXVII.

One ceaſes to be a ſubject, the republic being deſtroyed.

Moreover, the general duties of ſubjects oblige as long as they continue ſubjects; the ſpecial, only ſo long as they continue in the ſtations to which their reſpective duties belong. But one ceaſes to be a ſubject ſeveral ways. For a republic conſiſts of a number of men (§ 107), whom we call *a people*; whence it follows, that the people being extinct or diſperſed (which may happen by an earthquake, war, inundations, and other public calamities) a few ſurviving perſons ceaſe to be ſubjects, unleſs they maintain their ſtate till they grow again to a ſufficient number of people *. But one does not ceaſe to be a ſubject, if a people, being conquered in war, accedes as a province to another ſtate, becauſe he then becomes the ſubject of another ſtate; nor if the form of the republic be changed, becauſe a people does not then ceaſe to be the ſame.

* A few ſo ſurviving, Grotius, 2. 9. 4. thinks, may, as private perſons, ſeize the dominion or property of the things which the whole people formerly poſſeſſed, but not the empire. But ſo long as the ſurviving perſons have a-mind to have a common ſupreme magiſtrate, and to ſubmit themſelves to his will for their common internal and external ſecurity, why does not the republic remain? Thus did the Athenian republic remain, when the people were reduced to the greateſt extremity, inſomuch, that all fit to bear arms being deſtroyed, they gave the right of citizenſhip to ſtrangers, freedom to ſlaves, indemnity to condemned perſons, and after all, that medley was ſcarcely able to maintain their liberty, Juſt. Hiſt. 5. 6.

Sect. CCXXVIII.

Not when the form of government is altered.

But becauſe the people remains the ſame, tho' the form of their government be changed (§ 227); the conſequence is, that the real treaties made by a people with other ſtates (§ 209), and the public pacts made with private perſons, while the former government remained unaltered, ſtill ſubſiſt; and therefore the obligations of the people ſtill are valid, tho' their form of government be changed. But that ſubjects are not bound by the deeds of thoſe who unjuſtly uſurped the government, or did any thing contrary to their fundamental laws *, is certain, for this reaſon, that they never conſented to their power or empire.

* Thus the Athenians, when they had got rid of the thirty tyrants, made a law that all their acts and judgments, private or public, ſhould be null, Demoſt. in Timocrat. p. 782. The Emperor Honorius made a like conſtitution with relation to the deeds of the tyrant Heraclianus, l. 13. C. Theod. de infirm. quæ ſub tyrann. But here prudence and moderation are requiſite, 1. If the obligation ariſe from ſomething that hath been profitable to the people, and turned to their advantage. 2. If one choſen by the people holds the ſovereignty for ſome time by miſtake, l. 3. D. de off. præt. upon which law there is a moſt learned diſſertation by Jac. Gothofredus, *de electione magiſtratus inhabilis*. 3. If one's government was originally juſt, and he afterwards degenerates into a tyrant, to which caſe I refer l. 2. & 3. C. Theod. eodem, where Conſtantine the Great juſtly confirms all the lawful deeds and reſcripts of Licinius.

Sect. CCXXIX.

What if the empire be divided, and a colony ſent.

Moreover, from the ſame principle (§ 226), we conclude, that one does not ceaſe to be a citizen or ſubject, if one ſtate is divided into many, or many coaleſce into one ſyſtem; tho' it may happen, in the former caſe, that one is no more a ſubject of the ſame, but of another ſtate. If a republic or ſtate reſolve to ſend a colony, it is of great moment of what kind that colony is. For ſome may go out of a larger country to conſtitute a republic that ſhall not be obliged to any thing with regard to its *metropolis*, but homage; and others, ſo as ſtill to remain a part of their mother-country *. Now, it is plain, that the former caſe is the ſame as when an empire is divided; and in the latter there is no alteration with reſpect to the firſt obligation of the ſubjects who make the colony.

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* Such colonies the ancient Greeks uſed to ſend. Whence in Thucydides, l. 1. p. 25. the Corcyræans ſay, "They are not ſent into colonies on theſe terms that they may be ſlaves, but that they may be equal to thoſe who ſtill remain in their native country." To which the Corinthians anſwer, "We did not plant a colony of them to be affront-

ed and deſpiſed by them, but that we might ſtill remain their maſters, and have homage paid by them to us. For the other colonies love and reſpect us." Therefore, it was the only duty of thoſe colonies to pay reſpect to their mother country, and to teſtify that reſpect by ſome ſolemnities, as the ſame Thucydides ſpeaks, p. 18. ibidem, adding (as his ſcholiaſt explains it) that theſe honours chiefly conſiſted, in giving, at the public ſacrifices, when they diſtributed the entrails, the firſt ſhare to the citizens of the metropolis. Hen. Valeſius not. ad Excerpta Peireſc. p. 7. has largely treated of the other honours rendered in colonies to the ſubjects of their ancient mother-country. But the cuſtoms amongſt the Romans were different: For their colonies received their laws and inſtitutions from the Romans, and did not make them themſelves. See Gellius Noct. Attic. 17. Yet the Albanian colony was their own maſters from the firſt, and not only did not pay any homage to their primitive country, but ſcrupled not to bring it under ſubjection to them; for which Metius Fufetius reproaches them in Dionyſ. Halicarn. Antiq. Rom. l. 3, p. 143.

Sect. CCXXX.

If by changing habitation.

Again, ſince one is a ſubject, in regard that he conſtitutes with others one republic, or with regard to a republic into which he willingly enters (§ 108); it follows from thence, that one ceaſes to be a citizen, ſo ſoon as he willingly removes with that deſign from his native country, and joins himſelf to another ſtate, ſettling there his fortune and family, unleſs the public laws forbid ſubjects to remove, as among the citizens of Argos, of whom Ovid ſays, Metam. l. 15. v. 28.

Prohibent diſcedere leges,
Pœnaque mors poſita eſt patriam mutare volenti.

or that liberty be indulged only with regard to a part of one's effects, which is the cuſtom in ſeveral European nations. That they change their ſeat, but not their obligation to their country, who deſert to an enemy, is manifeſt; and therefore, when they can be brought back, they are juſtly puniſhed.

Sect. CCXXXI.

If by baniſhment.

In fine, becauſe thoſe who are members of any ſociety, and do not conform to its laws, may be ſevered from the ſociety by the other members (§ 21); the ſame right certainly belongs to members of a civil ſtate; and therefore, bad ſubjects may very juſtly be exiled; and this being done, they certainly ceaſe to be ſubjects. But this is not the caſe with reſpect to thoſe who, tho' ſent out of a country, ſtill poſſeſs eſtates in it, or to thoſe who are tranſported to a certain place ſubject to the country, there to lead a diſagreeable life, or perform ſome taſk by way of puniſhment. In general, I ſhould think, that thoſe who are deprived, for any crime, of the right of citizenſhip, are deprived of the privileges of ſubjects, but are not thereby freed from their obligation to their country, ſo far at leaſt, as that they may moleſt it, or, imitating Coriolanus, take up arms againſt their countrymen, Liv. 2. 35.

A SUPPLEMENT

Concerning the Duties of

SUBJECTS *and* MAGISTRATES.

WE have had little occaſion to differ, very conſiderably at leaſt, from our Author, except in one important queſtion, about the meaſures of ſubmiſſion to the ſupreme power; and as little occaſion to add to him, except with relation to the natural cauſes of government, and their neceſſary operations and effects; *a conſideration of great moment in moral and political philoſophy, which hath however been overlooked, not by our Author only, but by Grotius and Puſendorff, and all the moral-ſyſtem writers I have ſeen.*

Theſe few things excepted, which we have endeavoured to ſupply in our remarks, our Author will be found, having had the advantage of coming after ſeveral excellent writers, to have given a very full compend of the laws of nature and nations, in which, they are deduced by a moſt methodical chain of reaſoning, from a few ſimple and plain principles, and they are applied to as many proper caſes as is requiſite to initiate any attentive intelligent reader into this ſcience, and enable him to decide, by his own judgment, any queſtions that may occur in life concerning juſtice and equity, between ſubject and ſubject, in whatever relations, natural or adventitious, as parent, huſband, maſter, &c. between ſubject and magiſtrate; or finally, between ſeparate and independent ſtates. Now, upon a review of what our Author hath done, every one, I think, muſt perceive that the ſcience of morals may be divided into two parts. The firſt of which is more general, and very eaſy and plain, conſiſting of a few axioms, and certain obvious concluſions from them, with relation to the general conduct of our life and actions. The ſecond conſiſts in finding out from theſe more general rules, what equity requires in various more complicated caſes. And here, as in all other ſciences, for the ſame reaſon, the deduction muſt be longer or ſhorter, according as the concluſions lie nearer to, or more remote from the firſt fundamental truths in the ſcience. There is no ſcience in which the firſt axioms or principles are more evident than that of morality. Thus, for example, the only principle our Author, or any other moral writer requires, or has occaſion for, in order to demonſtrate all the ſocial duties of mankind, is, "That it is juſt to hurt or injure no perſon, and to render to every one his own, or his due; or in other words, That it is juſt and equal to do to others, as we would have them to do to us." The reaſonableneſs of this principle is ſelf-evident; and there is no caſe, however complex, relating to ſocial conduct, wherein the reaſonable part one ought to act may not be inferred from this principle. Certain general rules of conduct obviouſly ariſe from this principle. And the reſolution of particular caſes conſiſting of many circumſtances by it, only appears difficult till one hath been a little practiſed in attending to circumſtances, and ſeparating, weighing, and balancing them. Here indeed ſtudy is requiſite, as in other ſciences, where the firſt principles are likewiſe very ſimple; and many truths are eaſily deducible from them, but others lie more remote, and require a longer train of argumentation: But yet it may be averred, that the remoteſt truths, and the moſt complex

Selfevident
fundamental
Principle of
Ethicks and
Politicks.

caſes in morals, are not ſo difficult to be reſolved, or do not lie ſo diſtant from their firſt principles, as the higher truths in moſt other ſciences. And therefore, it is juſtly ſaid by moraliſts, that the ſcience of morality is more level to every capacity than any other ſcience; tho' certainly a thorough acquaintance with it requires a good deal of cloſe thought and attention, and conſiderable practice in the examination of examples or caſes. This, I think, every one, who hath read our author with any degree of attention, will readily acknowledge, whatever he may have thought, while he viewed this ſcience at a greater diſtance. But, in order to give a ſhort view of the extent of this ſcience, and diſtinguiſh what is more eaſy and obvious in it from what is more complex and difficult, let us firſt conſider an excellent ſummary given us by Cicero of the general laws or obligations of nature; and then let us caſt our eye on what he ſays upon the deſign of civil law, which is to ſettle the rules of equity in more complex or compounded caſes. We find him diſcourſing thus of the general laws of nature. "The law of nature, ſays he, does not conſiſt in opinion merely, neither is the ſenſe of its obligation wholly formed by education and art; but it is from nature: we are led, directed, and impelled to fulfil its obvious dictates by certain diſpoſitions cogenial with us: we feel its force, ſo ſoon as objects proper to excite and ſtir certain affections deeply inlaid into the frame of our minds, are preſented to us. Nature thus leads us to religion, to piety, to gratitude, to reſentment of injuſtice, to eſteem and veneration, to veracity and candour. Religion conſiſts in reverence toward ſome ſuperior divine nature, and concern to approve ourſelves to that Being, by whom we and all things ſubſiſt. Piety directs us to the love of our country, our parents, and of all who are endeared to us by natural ties of blood. Gratitude teaches us to maintain a kindly reſentment of good offices, and to love, honour, and reward our benefactors. Reſentment of injuſtice impels us to ward againſt and puniſh all injuries to ourſelves, or to others who ought to be dear to us; and in general, to repel all iniquity and violence. Reverence is naturally excited in us by grave and wiſe old age, by eminence in virtue, or worth and dignity. Veracity conſiſts in fulfilling our engagements, and acting conſiſtently with what we promiſe, profeſs or undertake." Cicero de inventione rhetorica, l. 2. n. 22. & n. 54. where he adds excellent definitions of prudence, juſtice, magnanimity, patience, temperance, modeſty, perſeverance, and all the virtues which make men good and great.

This is Cicero's ſuccinct abridgment of the more general laws of nature: And he calls them laws of nature, becauſe the obligation to them is founded in human nature; the happineſs of mankind conſiſts in the obſervance of them; and mankind are pointed and prompted to fulfil them by natural diſpoſitions or principles in their minds. Inſomuch that the idea of a ſupreme Governor of the univerſe cannot be preſented to our minds, without exciting religious veneration and love in them; nor can the idea of our parents, our relatives by blood, or of our country, be ſet before us, and we not feel certain kindly affections ſtir within our breaſts, which are very properly called, in a peculiar ſenſe, natural affections; nor the idea of a generous benefactor, and our hearts not burn with gratitude towards him; nor the idea of injuſtice to ourſelves, or even to others, and we not be filled with indignation and reſentment; nor the idea of great wiſdom, virtue and integrity, and we not be affected with eſteem and reverence towards ſuch characters; nor finally, the idea of conſiſtency, faithfulneſs and candour, and we not admire and approve the beautiful image; and own ſuch conduct to be truly laudable and becoming. We are naturally affected by the ſeveral objects that have been mentioned in the manner deſcribed: And it is eaſy to perceive, that the private happineſs of every individual, and the common happineſs of our kind, which we cannot reflect upon without feeling a very high ſatisfaction in it, and a very ſtrong tendency to promote it, are inſeparably connected with the practice of thoſe virtues. They are therefore, in every ſenſe, of natural obligation. This, I take to be a juſt paraphraſe upon what Cicero ſays in the paſſages above referred to, and to be ſufficient to ſhew the ſtrength and evidence of the more general rules of morality.

Now Cicero, agreeably to this account of human nature, and of the primary laws and obligations ariſing from it, thus defines the end of civil ſociety (to which nature likewiſe ſtrongly excites and impels us) and of its laws. (Topic ad Tribatium, n. 2.) " The end of civil ſociety, and civil laws, (ſays he) is ſecurity of property, and equal treatment to the members of the ſame ſtate, in conſequence of juſt conſtitutions, formed and guarded by mutual conſent." And how elegantly doth he elſewhere enlarge upon the advantages of good civil laws, which ſecure the members of a ſtate againſt all violence and injuſtice, and all feuds, animoſities and quarrels, in the peaceable unmoleſted poſſeſſion and uſe, each of his own honeſt acquiſitions, (Orat. pro Cæcinna, n. 26.) " — A remarkable thing indeed, and worthy of your attention and remembrance, ye protectors of civil rights, on this very account. For what is the end of civil law? Is it not a ſecurity for our properties and rights, which cannot be biaſſed by affection, bended by force, nor corrupted by money; and which, tho' not totally violated, yet if but deſerted in the ſmalleſt degree, or if negligently obſerved, we are neither ſure of inheriting what our fathers may leave to us, nor of making our children our heirs? For what ſignifies it, to have houſes or lands left us by a father, if our poſſeſſion be precarious and uncertain? Let an eſtate be yours by the fulleſt right, yet how can you be ſure of keeping it, if this right be not ſufficiently fortified, if it be not protected by civil and public law againſt the covetouſneſs of the more powerful? What avails it, I ſay, to have an eſtate, if the laws relating to confines, marches, poſſeſſion, uſe, the rights of water, paſſage, *&c.* may be changed or diſturbed on any account? Believe me, many greater advantages redound to us from good laws, and the conſervation of juſtice, than from thoſe who leave us an inheritance. A piece of land may be left me by any one, but my ſecure poſſeſſion and uſe of it depend upon the inviolability of the civil laws. My patrimony is left me by my father, but the uſucapion of this eſtate, which puts an end to all ſollicitude, and ſecures againſt all vexatious ſuits, is not left me by my father, but by the laws. My eſtate, with the rights of water, air, paſſage, light, *&c.* is left me by my father, but my ſecurity for the undiſturbed poſſeſſion of theſe rights, is an inheritance I owe to the laws. Wherefore, we ought to be no leſs concerned about this public patrimony, the good laws and conſtitutions handed down to us from our anceſtors, than about our private eſtates; not only becauſe theſe are ſecured to us by the laws, but becauſe tho' one may loſe his eſtate without hurt to any other perſon but himſelf, yet right cannot be violated without the greateſt detriment and injury to the whole ſtate, *&c.*"

Here Cicero briefly runs through ſome of the principal points which ought to be ſettled by civil laws, agreeably to natural equity, for the encouragement of honeſt virtuous induſtry, and in order to exclude all injuſtice, violence and moleſtation; ſuch as, ſucceſſion by teſtament, and to inteſtates, poſſeſſion, uſe, uſufruct, perfect or imperfect

perfect dominion, ſervices, contracts, *&c.* And it is the rules of equity with regard to theſe and ſuch like matters, which it is the buſineſs of the moral ſcience to deduce from certain and evident principles, for the direction of ſociety in fixing and determining its laws. And therefore, to be a maſter of the moral ſcience, it is not enough to know the firſt axioms of it, and its more general and obvious rules; but one muſt be capable of following them thro' all their remoteſt conſequences, in theſe and other ſuch complicated caſes, ſo as to be able to judge of civil laws by them. And ſurely, however cloſe attention and long reaſoning this more difficult part of morality may require, it does not require long reaſoning to prove, that this is the moſt proper ſtudy of thoſe whoſe birth and fortunes furniſh them with time and means for improving themſelves to ſerve their country in the higheſt ſtations of life. Who doth not at firſt ſight perceive that this is the character every man of birth ought to aim at, and that his education ought to be adapted to qualify him for attaining to, even that glorious one which Cicero (ibidem) gives of C. Aquilius? " Wherefore, let me aver it, that the authority of the perſon I have juſt mentioned, can never weigh too much with you. Aquilius, whoſe ſingular prudence the people of Rome hath ſo often proved, not in deceiving, but in rightly adviſing them, and who never ſevered equity from civil law. Aquilius, whoſe extraordinary judgment, application and fidelity, have been ſo long devoted to the ſervice of the public, and have been on many occaſions ſo ready and powerful a ſtay to it. One ſo juſt and good, that he ſeems to have been formed for giving counſel and adminiſtring juſtice, rather by nature than by diſcipline : One ſo wiſe and knowing, that he ſeems by his ſtudy of the laws to have acquired not merely knowledge, but likewiſe virtue and probity : One, in fine, whoſe underſtanding is ſo clear and accurate, and his integrity ſo habitual and impervertible, that whatever ye draw from this fountain, ye perceive, ye feel to be pure and unadulterated." For ſuch excellent qualities ſhall the memory of a *Talbot* be ever dear and precious: And hence the manifold advantages we daily receive under the upright and prudent guardianſhip of a *York*. And all our youth, who have the noble ambition to be equally uſeful, and equally loved and honoured, muſt purſue their paths, and add to the ſame incorruptible integrity, the ſame thorough knowledge of natural equity, and of our excellent conſtitution and laws *. It is in order to contribute my mite to aſſiſt them in this glorious purſuit, that I have given them this admirable abridgement of the laws of nature and nations in Engliſh, with ſome neceſſary ſupplements. For every ſcience hath its elements, which, if they be well underſtood and carefully laid up, not in the memory but in the judgment, the ſcience itſelf may be ſaid to be maſtered, it being then very eaſy to make progreſs in it. Let me only ſuggeſt here, that it will ſtill be neceſſary, after having well digeſted this ſmall ſyſtem, to read Grotius, and together with him his beſt commentator Pufendorff *, and ſeveral other authors, the treatiſes of Bynkerſhoek ſo often commended by our Author in particular; and after having read theſe excellent writers, it will not be improper often to return to our Author, and review him as a good compend of them all. And to add no more on the utility of this ſtudy, as without ſome acquaintance with the principles of moral philoſophy, it is impoſſible to reap more than mere amuſement by reading hiſtory; ſo when one hath once taken in a clear view of the more important truths in morality and politics, it will be equally eaſy, pleaſant and advantageous for him to apply theſe truths, as a meaſure or ſtandard, to the facts or caſes he meets with in hiſtory, to private or public actions, and their ſprings or motives, and to the laws, conſtitutions and policies of different ſtates: And it would not certainly be an improper way of ſtudying our laws, firſt to get well

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* Becauſe this ſtudy is generally ſuppoſed to belong only to thoſe who are to follow the law as a profeſſion, and not to make a neceſſary part of liberal education, I can't chooſe but inſert here the account that is given us of ancient education in the ſchools at Apollonia, to which Auguſtus was ſent by Julius, and Mæcenas by his parents. See Dion. lib. 45. p. 307. and Velleius Paterculus, l. 2. cap. 59. with Boecler's note upon theſe words, — "Apolloniam eum in ſtudia miſerat." (edit. Petri Burmanni.) Firſt, it is obſerved, that Julius took care to have Octavius inſtructed in all the arts of government, and in every thing requiſite to qualify him for a ſuitable behaviour in the exalted ſtation for which he had deſigned him. Then the ſeveral particular parts of his education are mentioned, ſuch as the languages, rhetoric, military exerciſes, and which was chief, morals and politics, *τὰ πολιτικὰ καὶ τὰ ἀρχικὰ*; and in all theſe uſeful arts it is ſaid the youth were inſtructed diligently, accurately and practically, *τὸ ἀκριβως, τὸ ἐῤῥωμενως, τὸ ισχυρως*. Boecler refers to Lipſius, l. 1. polit. c. 10. where there are ſeveral obſervations on this ſubject. And how indeed can that but be a principal part in the education of young men, whoſe birth and fortune call them to the higher ſtations of life? What good purpoſe can their education ſerve if this be neglected? Or what is principal, if that be not, which is abſolutely neceſſary to qualify them for their principal duties, and for the noble employments by which alone they can acquire glory to themſelves, or do good to their country? Is the art of ruling, law-giving, or

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of diſcharging any important office in the ſtate, the only one that requires no preparation for it, no previous ſtudy or practice?

* I have ſaid his beſt commentator; becauſe he is conſtantly examining Grotius's reaſonings and determinations, and very rarely differs from him. And they ought to be read together, which may be eaſily done, Barbeyrac in his notes upon Grotius having all along mentioned the chapters in Pufendorff where each queſtion in Grotius is handled.

acquainted with the laws of nature (large commentaries upon which are generally at the ſame time commentaries upon the Roman laws, the examples being commonly taken from thence), and then to go over the ſame laws of nature again in order, and to enquire into our laws under each head, and try them by the laws of nature, as the Roman laws are commonly canvaſſed by the maxims of natural equity, in treatiſes upon univerſal law.

But tho' I could not take my leave of our author without ſaying theſe few things about the nature and uſe of the ſcience to which his treatiſe is ſo good an introduction; yet the deſign of this ſupplement is chiefly to treat a little more fully than he hath done of the duties of ſubjects and magiſtrates; and here I ſhall only cut off ſome things, and add a few others to what is to be found in the learned Barbeyrac's notes upon the tenth and following ſections in the eighth chapter of the ſeventh book of Pufendorff of the law of nature and nations.

The duties of ſubjects are either general or particular. The firſt ariſe from the common obligation they are under, as ſubmitting to the ſame government. The others reſult from the different employments and particular offices with which each ſubject is honoured or entruſted. 1. The general duties of ſubjects reſpect their behaviour either towards the governors of ſtate, the whole body of the people, or their fellow ſubjects. 1. As to the governors, every one ought to ſhew them the reſpect, fidelity and obedience which their character demands. So that ſubjects ought not to be factious or ſeditious, but to be attached to the intereſt of their prince, and to reſpect and honour him. This is certainly juſt. But then, in order to this, a prince muſt deſerve love and honour. For tho' power may force ſubmiſſion, 'tis merit only that can create reſpect, give authority, or beget love. The command to honour a king muſt be underſtood as the command to honour any other perſon muſt be underſtood; not as a command to honour him whether he deſerves it or not; for that would be an abſurd command; a command to proſtitute honour and reſpect. 'Tis good princes alone that can be honoured, becauſe they alone deſerve it, or have the great and amiable qualities that can excite eſteem. We ought even to have a veneration for the memory of good princes; but for thoſe who have not been ſuch, behold the judicious reflections of Montagne. "Among thoſe laws, ſays he, which relate to the dead, I take that to be the beſt, by "which the actions of princes are to be examined "and ſearched into after their deceaſe. What juſtice could not inflict upon their perſons while "they were alive, and equal to, if not above the "laws, is but reaſonable ſhould be executed upon "their reputation when they are dead, for the benefit of their ſucceſſors. This is a cuſtom of "ſingular advantage to thoſe nations where it is "obſerved, and by all good princes as much to be "deſired, who have reaſon to complain that the "memories of the tyrannical and wicked ſhould "be treated with the ſame honours and reſpects as "theirs. We owe indeed ſubjection and obedience "to all our kings alike, for that reſpects their office; but as to eſteem as well as affection, thoſe "are only owing to their virtue. Should it therefore be granted, that we are to be very patient "under unworthy princes while they hold the rod "over us? Yet, the relation between prince and "ſubject being once ended, there is no reaſon why "we ſhould deny to our own liberty, and common juſtice, the publiſhing of our wrongs.—— "Livy, with abundance of truth, ſays, that the "language of men educated in a court was always full of vanity and oſtentation, and that the "characters they give of their princes are ſeldom

" true. And tho' perhaps ſome may condemn the " boldneſs of thoſe two ſoldiers, one of whom being " aſked by Nero, why he did not love him? anſwered him plainly to his face, I loved thee " whilſt thou waſt worthy of it; but ſince thou " art become a parricide, an incendiary, a waterman, " a player, and a coachman, I hate thee as thou doſt " deſerve: And the other being aſked, why he ſhould " attempt to kill him? as warmly replied, Becauſe I could think of no other remedy againſt " thy perpetual miſchiefs. Yet who, in his right " ſenſes, will blame the public and univerſal teſtimonies that were given of him after his death, " and will be to all poſterity, both of him, and of " all other wicked princes like him in his tyrannies " and wicked deportment? I am ſcandalized, I " own, that in ſo ſacred a government as that of " the Lacedemonians, there ſhould be mixed ſo " hypocritical a ceremony at the interment of their " kings, where all the confederates and neighbours, " all ſorts of degrees of men and women, as well " as their ſlaves, cut and ſlaſhed their foreheads in " token of ſorrow, and repeated in their cries and " lamentations, that that king (let him be as wicked as the devil) was the beſt that ever they had; " by this means proſtituting to his quality, the " praiſes which only belong to merit, and that " which is properly due to ſupreme merit, tho' " lodged in the loweſt and moſt inferior ſubjects, " Eſſay, l. 1. cap. 3."

2. With reſpect to the whole body of the people, it is the duty of every good ſubject to prefer the good of the public to every other motive or advantage whatſoever, chearfully to ſacrifice his fortune and life, and all that he values in the world, for the preſervation and happineſs of the ſtate. Union is generally recommended to ſubjects as their duty. It is ſaid, that union will make a people flouriſh, and diſſention will ruin any people.

But there muſt be care taken to have a juſt notion of the meaning of thoſe words. An union ſerviceable to a ſtate, is what deſigns the univerſal good of thoſe who live in it. For if, *e.g.* in a monarchical ſtate, where the power of the Sovereign is limited by the laws, the principal ſubjects of the ſtate ſhould willingly, or by force, conſent to ſubmit all the laws to the prince's pleaſure, ſuch an union would not be advantageous to it in any reſpect. It would change a ſociety of free people into a company of miſerable ſlaves. The ready compliance of the Chineſe to obey their king blindly, does but ſtrengthen his tyranny, and add to their miſery. But it is aſſerted, that the general obedience of the Chineſe is of ſervice to preſerve the peace of their country, and that they enjoy by it all the advantages which the ſtricteſt union can procure. They muſt mean all the advantages that can be poſſeſſed in ſlavery. But ſure there is not a free-man but had rather ſee the moſt frequent commotions than ſuffer an eternal ſlavery. Moreover, it is falſe to affirm that there are no inteſtine wars under ſuch a form of government. The moſt enſlaved people will, in time, grow weary of an exorbitant tyranny, and upon the firſt opportunity ſhew that the deſire of liberty cannot be quite ſtifled in the ſouls of men born to freedom. This happens among the Chineſe and Turks. The union of thoſe who govern an ariſtocratical ſtate would be uſeleſs, if it did not preſerve the obſervation of the laws, and the univerſal good of the commonwealth. This we may underſtand from the hiſtory of the thirty tyrants of Athens and the Decemviri of Rome. The union of thoſe men ſerved only to cruſh the people, and make them miſerable; becauſe their principal deſign was to gratify their paſſions, without having the leaſt reſpect to the public good. Union may be alſo conſidered with regard to the people, who, when the ſtate is happy, and well adminiſtred, ought to eſteem themſelves happy, and to obey chearfully. Now, to keep the people in ſo firm an union, it is requiſite that not only they may be the better for it, but alſo that they ſhould be ſenſible of their own happineſs. In general, the agreement and union both of governors and people, ought to tend to the public good: from whence it follows, that whatſoever has not ſuch a deſign is injurious, and ought rather to be termed a conſpiracy than an union; ſince the name of a virtue cannot with reaſon be attributed to a thing which injures and ruins a ſociety. Public ſpirit is the motive that ought to lead and govern ſubjects. And then is one truly public-ſpirited, when nothing is dearer to him than the liberty and happineſs of his country. Yet we muſt here obſerve, that the engagement of every particular perſon does in ſome meaſure depend upon the performing of what the reſt are obliged to do, as well as himſelf, for the public good. For indeed the public good is only the conſequence of the united forces and ſervices of many conducing to the ſame end. If then in a ſtate it is become cuſtomary for the generality openly to prefer their own private intereſt to that of the public, a good ſubject will not, in that caſe, be to blame in the leaſt, in not caring to expoſe his perſon or his fortune by a zeal impotent and uſeleſs to his country.

Laſtly, the duty of a ſubject towards his fellow ſubjects, is to live with them in a peaceable and friendly manner; to be good humoured and complaiſant to them in the affairs of human life, and to give mankind no uneaſineſs by peeviſh, moroſe, and obſtinate temper; and, in ſhort, not to envy or oppoſe the happineſs or advantages of any one.

2. The particular duties of ſubjects are annexed to certain employments, the diſcharge of which

influences, in ſome meaſure, either the whole government, or only one part of it. Now, there is one general maxim with regard to them all, and that is, that no one aſpire to any public employment, or even preſume to accept of it, when he knows himſelf not duly qualified for it. What conſciences muſt thoſe men have, who not only accept of, but brigue for places they are abſolutely unqualified for; as for example, a ſeat in the ſupreme judicatures of a nation! A truſt which requires, beſides great virtue, great knowledge and wiſdom; a thorough acquaintance with the conſtitution and laws of a ſtate, and the intereſts of the people. And yet (as Socrates obſerved very truly) the manner of the world is quite otherwiſe. For tho' no body undertakes to exerciſe a trade, to which he has not been educated, and ſerved a long apprentiſhip; and how mean and mechanical ſoever the calling be, ſeveral years are beſtowed upon the learning of it; yet, in the caſe of public adminiſtrations, which is, of all other profeſſions, the moſt intricate and difficult (ſo abſurd, ſo wretchedly careleſs are we) that every body is admitted, every body thinks himſelf abundantly qualified to undertake them. Thoſe commiſſions are made compliments and things of courſe, without any conſideration of mens abilities, or regarding at all whether they know any thing of the matter; as if a man's quality, or the having an eſtate in the country, could inform his underſtanding, or ſecure his integrity, or render him capable of diſcerning between right and wrong, and a competent judge of his poorer (but perhaps much honeſter and wiſer) neighbours, See *Charron ſur la ſageſſe.* To buy public offices, or procure them by bribery, or to give it a ſofter name, largeſſes, is ſtill more infamous and abominable, the moſt ſordid, and the moſt villainous way of trading in the world. For it is plain, he that *buys in the piece, muſt make himſelf whole again.*

again by ſelling out in parcels. Beſides, this way of procuring public truſts corrupts a people, and renders them mercenary and venal, and fit to be ſold. And a diſhoneſt, corrupt people, neither deſerves to be free, nor can they long preſerve themſelves from being bound with the fetters, their vile proſtitution of honour and conſcience to ſordid gain demerits. Let me only add upon this head, that to a free people, who have the right of making their laws, and laying on their own taxes by their repreſentatives, it may be juſtly ſaid, as it was to the people of Iſrael of old, *That their evil is of themſelves; whatever they ſuffer, they have themſelves to blame for it*; and conſequently, the guilt of it lies upon themſelves. A horrid, inexpiable guilt, of which the greateſt miſery that a nation can fall into, is but the juſt puniſhment, for which no commiſeration is due to them who brought it upon themſelves; but to their unhappy poſterity, who muſt curſe them, if they are not quite inſenſible of the value of the liberty and happineſs their anceſtors baſely gave up, and the deplorable condition they are depreſſed into by the corruption and venality of thoſe who gave them birth, *i. e.* till ſlavery, as long continued ſlavery never fails to do, detrudes them into a ſtate not far removed above that of the brutes. But we muſt be a little more particular with regard to the duties belonging to employments.

1. Miniſters of ſtate, or privy counſellors, ought, with the greateſt application, to ſtudy, and perfectly to know the affairs and intereſts of the ſtate in all the parts of government, and to propoſe faithfully, and in the moſt proper manner, whatever appears to them to be advantageous to the public, without being influenced by either affection, paſſion, or any ſiniſter views. The public good ought to be the only deſign of all their advice and endeavours, and not the advancement of their own private fortunes, and the promoting their

own power and greatneſs. Nor muſt they ever, by vile and nauſeous flattery, countenance or encourage the criminal inclinations of the prince. 1. They ought, firſt of all, to be men of virtue and good principles. 2. Perſons of great abilities, well acquainted with politics, and particularly well verſed in the conſtitution, laws and intereſts of the nation. 3. Perſons tried before, who have come off with honour and ſucceſs in other truſts; men practiſed in buſineſs, and accuſtomed to difficulties. For hardſhips and adverſities are the moſt improving leſſons. "Fortune, ſays Mithridates in Saluſt, in the room of many advantages ſhe has torn from me, has given me the faculty of advice and perſuaſion." Men, at leaſt of ripe years, to give them ſteadineſs, experience, and conſideration; for it is one of the many unhappineſſes attending youth, that perſons then are eaſily impoſed upon. 4. And finally, they ought to be men of openneſs, freedom and courage in all their behaviour when they are conſulted with; who will uſe their utmoſt care that all their propoſals be for the honour and advantage of their prince and their country; and when once they have ſecured this point, that the advice is good, will lay aſide all flattery and diſguiſe; deteſt and deſpiſe all equivocations and reſervations, and craftineſs of expreſſion, by which they may ſeem to aim at ingratiating themſelves, or to contrive that what they ſay may be acceptable to their maſter: The very reverſe of thoſe men whom Tacitus deſcribes, "Who accommodate their language as they ſee occaſion, and *do not ſo properly diſcourſe with the prince, as with his preſent inclinations and circumſtances.*"

2. The clergy, as being the public miniſters of religion, ought to diſcharge their duty and function with the utmoſt gravity and application; ſhould teach no doctrine, nor advance any opinion in religion, which does not appear to them to be ſincerely true; and ſhould be themſelves a ſhining

example by their own conduct of thoſe inſtructions which they deliver to the people. "Never did a covetous preacher make his hearers liberal. Never did a voluptuous clergyman perſuade any one to abſtain from pleaſures, or to uſe them with moderation; at leaſt, when thoſe perſons were diſcovered to be what they really are." Their bad example will do abundantly more miſchief than their beſt ſermons can do good; for example is more powerful than precept.

3. Magiſtrates, and all other officers of juſtice ought to be of eaſy acceſs to every body; protect the common people againſt the oppreſſions of the more powerful; be as forward in doing juſtice, and that with the ſame impartiality to the mean and poor as to the great and rich; not ſpin out a cauſe to an unneceſſary length; never ſuffer themſelves to be corrupted by bribes and ſollicitations; examine thoroughly into the matter before them; and then determine it without paſſion or prejudice; regardleſs of every thing while they are doing their duty. Tho' it be an excellent qualification in a magiſtrate, to temper juſtice with prudence, and ſeverity with gentleneſs and forbearance; yet it muſt be confeſſed to be much more for the common advantage, to have ſuch magiſtrates as incline to the exceſs of rigour, than thoſe who are diſpoſed to mildneſs and eaſineſs and compaſſion. For even God himſelf, who highly recommends, and ſo ſtrictly enjoins all thoſe humane and tender diſpoſitions on other occaſions, yet poſitively forbids a judge to be moved with pity. The ſtrict and harſh magiſtrate is the better reſtraint, the ſtronger curb.

From the duties of inferior magiſtrates, let us paſs to thoſe of the ſupreme magiſtrate. And how happy is that poſt which every minute furniſhes opportunities of doing good to thouſands! But, on the other hand, how dangerous is that ſtation which every moment expoſes to the injuring of millions! The good which princes do, reaches even to the moſt diſtant ages; as the evils that they occaſion are multiplied from generation to generation to the lateſt poſterity. If the care of a ſingle family be ſo burdenſom, if a man has enough to do to anſwer for himſelf, what a weight, what a load is the charge of a whole Kingdom. Iſocrates calls a Kingdom the greateſt of human affairs, and ſuch as requires more than ordinary degrees of prudence and foreſight. And Cyrus well obſerves, that he who is above all the reſt in honour and authority, ſhould be ſo in goodneſs too.

Virtous of a Prince

Piety

Justice

Moderation

A prince and his court, as experience teaches us, is the ſtandard of manners as well as of faſhions. For nothing is truer than what Pliny ſays (Paneg. C. 45. n. 6.) Nec tam imperio nobis opus, quam exemplo, & mitius jubetur exemplo." "We do not want precepts ſo much as patterns, and example is the ſofteſt and leaſt invidious way of commanding." The virtues requiſite to a prince, and of which he ought to be the beſt pattern, are, 1. Piety, which is the foundation of all virtues: a ſolid and reaſonable piety, free from hypocriſy, ſuperſtition and bigotry. 2. The love of juſtice and equity. For the chief deſign a prince was made for, is to take care that every man has his right. *And this obliges him to ſtudy not only that part of human learning, which qualifies thoſe famous civilians, that are fit to be legiſlators themſelves, who go up to that juſtice which at firſt regulated human ſociety, who exactly knew what liberty nature has left us in civil government, and what freedom the neceſſity of ſtates take from private people, for the good of the public: But that part of the law too, which reſpects the rights, and deſcends to the affairs of particular perſons.* 3. A prince muſt above all things accuſtom himſelf to moderate his deſires. The philoſopher Arrian, de exped. Alex. ſays, "That it is eaſy to ſee from the example of Alexander, that whatever fine actions a man performs to outward appearance, it ſignifies nothing to true happineſs, if one does not at the ſame time know how to rule and moderate himſelf." 4. Valour is requiſite to a prince, but then it muſt be managed with prudence. 5. And above all, a prince ought to ſhine in goodneſs and clemency. 'Tis by no other means, but by the ſole good will of the people that he can do his buſineſs; and no other qualities but humanity, truth and fidelity, can attract their good-will. *Nihil eſt tam populare quam bonitas*, ſays Cicero; nothing is ſo popular as goodneſs, Orat. pro Ligar. cap. 12. A prince who does not reign in the hearts of his people, does not reign over the better part of his ſubjects. Their minds are not obedient or ſubmitted to him. 'Tis love only that can produce cordial obedience. Cicero gives us this enumeration of the virtues of a prince, *Orat pro rege Dejotar.* cap. 9. " *Fortem eſſe, juſtum, ſeverum, gravem, magnanimum, largum, beneficum, liberalem; hæ ſunt regiæ laudes.*" And to fortitude, juſtice, gravity, temperance, magnanimity, liberality, beneficence, which are allowed to be virtues neceſſary to make a prince great and glorious. He adds another, which he ſays is generally thought to be a private virtue only, *viz.* frugality. " *Sed præcipue ſingularis & admiranda frugalitas, etſi hoc verbo, ſcio, reges non laudari ſolere. Ut volet, quiſquam accipiat: ego tamen frugalitatem, id eſt, modeſtiam & temperantiam, virtutem maximam eſſe judico.*" Cicero tells us, de legibus, l. 3. c. 3. " That the good of the public ought to be the ſole rule and motive of a prince's conduct, *ſalus populi ſuprema lex eſto.*" And an excellent author ſaid (Marcus Antonin. l. 4. c. 42.) " A prince ought always to have theſe two maxims in view; To do for the good of mankind all that the condition of a legiſlator and a king requires of him. And the other, To change his reſolution, whenever men ſkilled in ſuch matters give him better advice. But ſtill the change muſt be made from

Valour

Clemency

Frugality.

the

the motives of juſtice, and the public intereſt, and never for his own pleaſure, his own advantage, or his own particular glory.''

The truth of it is, that the very intereſt of the Sovereign requires that he ſhould direct all his actions to the public good.

Qui ſceptra duro ſævus imperio regit;
Timet timentes; metus in auctorem redit.
Seneca in Œdip. v. 705.

The following quotation from Mr. de Cambrai will ſerve to explain and illuſtrate this ſentence. "Where the ſovereign command is moſt abſolute, theſe princes are leaſt powerful. They take and ruin every thing, and are the ſole poſſeſſors of the whole ſtate; but there the ſtate languiſhes, the country is uncultivated, and almoſt deſert, the towns every day decay and grow thin, and trade is quite loſt. The king, who can never be ſuch by himſelf, but muſt be ſuch with regard to his people, undoes himſelf by degrees, by inſenſibly undoing his ſubjects, to whom he owes both his riches and his power; his kingdom is drained of money and men, and the loſs of the latter is the greateſt, and the moſt irreparable of loſſes. His arbitrary power makes as many ſlaves as he has ſubjects; they all ſeem to adore him; and all tremble at the leaſt motion of his eye. But ſee what will be the conſequences upon the leaſt revolution; this monſtrous power, raiſed to too exceſſive an height, cannot long endure; it wants ſupplies from the hearts of the people; it has wearied out, and exaſperated the ſeveral ranks of men in the ſtate, and forces all the members of that body to ſigh with equal ardour for a change: and at the firſt blow, the idol is pulled down, and trampled under foot. Contempt, hatred, fear, reſentment, jealouſy; in a word, all the paſſions combine together againſt ſo injurious and deteſtable a power. The king, who in the days of his vain proſperity, could not find one perſon that durſt tell him the truth, ſhall not find one in his adverſity that will vouchſafe to excuſe or defend him." All writers on this ſubject take notice of the danger of flattery to which kings, and ſons of kings, are ſo much expoſed. And on this occaſion a famous ſaying of Carneades is commonly quoted, "That ſons of princes, and other great and wealthy men, learn no art but that of horſemanſhip well, becauſe their horſes cannot flatter them." But there is an excellent book upon the education of a prince, lately tranſlated into our language from the French, in which all the qualities, virtues and duties of a prince are admirably deſcribed. And therefore, I ſhall add no more upon this ſubject, but the ſhort account Cicero gives us of Plato's doctrine concerning the buſineſs and duty of ſupreme magiſtrates, and one moſt beautiful paſſage from Cicero himſelf concerning empire, founded not in love, but fear. The firſt is in his firſt book of offices, chapter 25. "Rulers, or thoſe who deſign to be partakers in the government, ſhould be ſure to remember thoſe two precepts of Plato. Firſt, To make the ſafety and intereſt of their citizens the great aim and deſign of all their thoughts and endeavours, without ever conſidering their own perſonal advantage. And ſecondly, ſo to take care of the republic, as not to ſerve the intereſt of any one party, to the prejudice or neglecting of all the reſt. For the government of a ſtate is much like the office of a guardian or truſtee, which ſhould always be managed for the good of the public, and not of the perſons to whom it is entruſted; and thoſe men, who, whilſt they take care of one, neglect or diſregard another part of the citizens, do but occaſion ſedition and diſcord, the moſt deſtructive things in the world to a ſtate. From this root have ſprung many grievous diſſentions among the Athenians, and not only tumults, but even deadly civil wars in our own republic. Things, which one who deſerves to hold the reins of the government, will deteſt; and will give himſelf ſo to the ſervice of the public, as to aim at no riches or power for himſelf; and will ſo take care of the whole commonwealth, as not to paſs over any part of it." The other is in the ſecond book, chapter 7. It is well obſerved by Ennius, *Whom men fear, they hate*; *and whom they hate, they wiſh out of the world.* But that no force of power or greatneſs whatever can bear up long againſt the ſtream of public hate, if it were not ſufficiently known before, was of late made appear by an inſtance of our own. And not the violent death of that tyrant only, who by force of arms oppreſſed the city (which now moſt obeys him, when taken out of the world) but the like untimely ends of moſt other tyrants, who have generally been attended with the ſame ill fate, are a manifeſt token that the hatred of the people is able to ruin the moſt abſolute power. *For obedience, proceeding from fear, cannot poſſibly be laſting*; *whereas that which is the effect of love, will be faithful for ever.*"

A

DISCOURSE

UPON THE

NATURE *and* ORIGINE

OF

MORAL *and* CIVIL LAWS.

By *GEORGE TURNBULL*, L. L. D.

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A

DISCOURSE

Upon the NATURE and ORIGINE of

MORAL *and* CIVIL LAWS, &c.

IT will be acknowledged that ſubjects of importance deſerve to be ſet in various lights. Let us therefore endeavour to ſet the firſt principles of the ſcience of laws in a light, which, if not altogether new, yet may perhaps prove more ſatisfactory to ſeveral underſtandings, than that in which they are more commonly repreſented. One great thing to be avoided in the firſt ſteps of a ſcience, is diſpute about words. And we think that it will contribute not a little to this good effect in the ſcience we now propoſe to explain the firſt foundations of in the cleareſt manner we can, if, for ſome time, we only make uſe of terms well known to thoſe who are in the leaſt acquainted with natural philoſophy, in the very ſenſe they are uſed in that ſcience.

Sect. I.

What is called a law of nature by natural philoſophers.

Natural Philoſophy is defined to be the ſcience of the laws, according to which nature operates in producing its effects, and to which human art muſt conform in order to produce certain effects. And the ſettled methods, according to which nature works, and human arts muſt work, in order to produce certain effects, are called *laws of nature.*

An example or two will ſhew the truth and juſtneſs of theſe definitions. That part of natural philoſophy, which is properly called *mechanics*, conſiſts in ſhewing the laws of motion, and what it is in particular that conſtitutes the quantity of motion in a body, and in deducing from thence certain rules to be obſerved by human art in the contrivance of machines, in order to give them a certain uſeful force. And this connexion in nature is found to be the principle of mechanics, or the rule according to which machines for raiſing weights, or overcoming obſtacles, muſt be conſtructed, *viz.* That the moment of a body being its quantity of matter inducted into its velocity, any other body, however ſhort of another in quantity of matter, will be rendered equal to it in moment, by adding to the leſs heavy body, juſt as much more in velocity as it wants of the heavier in quantity of matter. For this plain reaſon, that becauſe if a body have a quantity of matter, as four, and a velocity as two, its force of motion or moment will be four multiplied by two; *i. e.* eight; and if another body have a quantity of matter, as two, and a velocity, as four, its force or moment will likewiſe be as two multiplied by four; that is, as eight; *i. e.* the two will be equal in moment. This principle is therefore called *the law of mechanic powers*, or *the law of nature*, with reſpect to quantity of motion. And upon this principle are balances, levers, cranes, pullies, wedges, ſcrews, and inclined planes conſtructed. And he who attempts to aſſiſt mankind in raiſing weights, or overcoming obſtacles, upon any other principle beſides this, attempts to make new laws in nature, and his aim will prove abſurd and loſt labour. In the ſame manner, optics is a ſcience which ſhews the laws obſerved by nature in the reflexion and refraxion of light, and points out the way of aſſiſting viſion, and attaining to certain other optical ends, as magnifying, diminiſhing, or multiplying objects, &c. And the laws obſerved by nature in reflecting and refracting light, are the laws of this human art; the laws according to which it muſt work to anſwer theſe purpoſes.

Sect. II.

What is called a law in moral philoſophy.

Now, in the ſame ſenſe, that in theſe, and other parts of natural philoſophy, certain ſettled methods, according to which nature operates, are laws to human arts; in the ſame ſenſe muſt any other connexions in nature be laws to other human arts, or laws to other human actions, if they are the eſtabliſhed means or orders, according to which certain other ends can only be attained by us. If therefore there are any other ends diſtinct from thoſe called *natural ends*, or *the ends of mechanical arts*; which, to diſtinguiſh them from the latter, may properly be called *moral ends*; the eſtabliſhed connexions in nature with regard to the attainment of theſe latter ends, will be, properly ſpeaking, the connexions which conſtitute means to moral ends; and the ſcience of theſe means and ends will be properly called *moral philoſophy*. And this philoſophy will naturally divide itſelf into the ſame parts as natural philoſophy does; *i. e.* into the part which inveſtigates the connexions or laws of nature, and reduces effects into them; and the part which ſhews how certain ends may be attained by human art or action, in conſequence of the ſettled laws of nature; the firſt of which is juſtly denominated a *theoretical*, and the other a *practical ſcience*. So that as there are two parts in natural philoſophy, one of which reſts in the explication of phænomena, by reducing them into laws of nature already found out by induction from experiments; and the other of which directs human labour in purſuing ends for the conveniency or ornament of life; in like manner, there are two parts of moral philoſophy, one of which is employed in inveſtigating by experiments the laws according to which phænomena of the moral kind are produced, and in reducing other phænomena into theſe laws ſo aſcertained; and the other conſiſts in deducing rules for human conduct in the purſuit of certain moral ends from the eſtabliſhed connexions and laws of nature relative to them.

What is meant by moral ends and means.

It cannot be ſaid, that we here take it for granted, without any proof, that there are *moral* ends and means; for in the ſenſe we have hitherto uſed *moral*, we have taken nothing for granted, but that there are certain phænomena or certain ends and means, which are diſtinct from thoſe commonly called *natural*, *phyſical*, or *mechanical*. And hardly will it be called into queſtion, that there are phænomena, and means and ends, which do not fall within the definition of thoſe which are the object of natural philoſophy. Who will deny that there are phænomena, means and ends relative to our underſtanding and temper; relative to progreſs in knowledge, to the acquiſition of habits, to conſtitution of civil ſociety, and many other ſuch like effects, which do not all belong to what is properly called *natural philoſophy?* In ſhort, none will ſay that the regulation of our affections and actions, in order to promote our own happineſs, or the common happineſs of mankind, is not an end quite diſtinct from that propoſed in phyſics. And this being granted, we have gained all we plead for at preſent, which is, that if there be other ends, for attaining to which there are eſtabliſhed means by nature, beſides thoſe conſidered in natural philoſophy, ſuch as the regulation of our inward affections, &c; theſe may be called *moral ends*, to diſtinguiſh them from the objects of natural philoſophy. And by whatever name they are called, they are a very proper ſubject of enquiry for man. For it muſt be granted in general, to be a very proper ſubject of human ſtudy, to enquire into all the good ends within human power, and into the eſtabliſhed means, in order to the attainment of them. And all ſuch eſtabliſhments or connexions in nature, are, with regard to men, principles or laws, according to which they muſt act, if they would attain to certain ends; no end, of whatever kind, being otherwiſe attainable by us, than as it is the effect of certain means, or as there are certain laws conſtituting a certain order of operation, according to which it may be attained. All ſuch connexions are therefore in the ſame ſenſe laws of nature; and do no otherwiſe differ from one another, but as their reſpective diſtinct ends, phyſical and moral, differ. Let not, however, what hath been ſaid be underſtood as if the laws of nature, with regard to the attainments of moral ends, had not a title to be called *moral laws* in another peculiar ſenſe, which cannot belong to any other laws of nature. For we ſhall by and by ſee that they have. But if what hath been ſaid be true, whatever other titles the laws of nature relative to moral ends, may, or may not deſerve, it is certain that theſe laws highly merit our attention. And the following general concluſion, with regard to us, muſt, in conſequence of what hath been premiſed, be incontrovertible.

Sect. III.

The frame and conſtitution of man is a natural law to him.

That the frame and conſtitution of man, and the connexions of things relative to him and his actions; *i. e.* in one word, the natural conſequences of human affections and actions within and without man, are a natural law to man. They limit, fix or ſettle the effects of his behaviour and conduct; they ſhew what are the different reſults of different manners of acting; and ſo determine what muſt be done to get certain goods, and what muſt be done, or not done, to avoid certain evils.

And man can no more alter theſe connexions of things, than he can alter the connexions upon which mechanical arts depend.

Now hence it follows, 1. That it is neceſſary for man to enquire into theſe connexions of things upon which his good or evil, his enjoyment or ſuffering, his happineſs or miſery depend, in order to attain to any goods. And, 2. That it is neceſſary for him to regulate his actions according to theſe connexions, in order to attain to any goods. And therefore theſe two may be called the primary laws of our nature: *viz.* the neceſſity we are in of knowing the connexions relative to our happineſs and miſery, and the neceſſity we are in of acting conformably to theſe connexions, in order to have pleaſure and avoid pain. We may, if we will, call the neceſſary determination of every being capable of diſtinguiſhing pain from pleaſure to purſue the one and avoid the other, the firſt law of nature. But it is more properly a determination eſſential to and inſeparable from every reflecting being, and that which conſtitutes the neceſſity of its attending to the connexions of things relative to its happineſs and miſery, than a law or rule relative to the means of its happineſs. The two firſt things therefore that offer themſelves to our conſideration with regard to beings capable of attaining to any goods, or of bringing any evils on themſelves by their actions, are the neceſſity of underſtanding the connexions eſtabliſhed by nature with regard to the effects or conſequences of their actions, and the neceſſity of regulating their actions according to theſe fixed connexions.

Sect. IV.

Whence this law is learned, and whence it comes.

Now that all connexions of nature, of whatever kind, whether thoſe reſpecting matter and motion, and mechanical powers and arts, or thoſe reſpecting the conſequences of our affections and actions, can only be learned from experience, by attention to the effects of different methods of operation, is too evident to be inſiſted upon. And therefore we ſhall only add upon this head, that as when ſpeaking of the laws of nature, which are the object of natural philoſophy, tho' they are ſhortly called laws of matter and motion; yet by them is really meant conſtitutions and connexions eſtabliſhed and taking place in conſequence of the will of the Author of nature: ſo the moment we have found out any connexions relative to happineſs or miſery with regard to human affections and actions, we have found certain conſtitutions or connexions relative to them, eſtabliſhed and taking place by virtue of the will and appointment of the Author of nature; ſo that tho', ſpeaking ſhortly, we call them natural laws, or moral laws of nature, yet in reality by them muſt be meant rules, laws or connexions of the Author of nature. For this muſt be true in general, that certain ſetled and fixed orders and connexions of things can only take place by virtue of the will of ſome mind ſufficient to give them ſubſiſtence and efficiency. Laws, whether in phyſics or in morals, can only mean certain appointments by the will of the mind who gave being to the world, and by whom it ſubſiſts. If by laws the appointments of ſome ſupreme Being be not meant, they are words without any meaning. So that we may henceforth indifferently ſay, either the connexions of things relative to man, the laws of nature relative to moral ends attainable by man, or the law and will of the Author of nature with regard to the conſequences and effects of human conduct. This we may certainly do without begging any thing in morality which we have not proved, ſince natural philoſophers uſe or may uſe theſe phraſes promiſcuouſly; and we as yet only deſire to be allowed to uſe thoſe phraſes in the ſame ſenſe they are uſed by natural philoſophers, when they ſpeak of means and ends, or connexions in nature, according to which effects are produced, and human arts muſt operate in order to be ſucceſsful.

May we not now therefore go on to enquire, if we can find out any of the more important connexions in nature relative to our good or happineſs, which are the laws of our nature, or the laws of the Author of nature with regard to our conduct, that may be called moral laws, or laws relative to moral ends.

Sect. V.

Every being is conſtituted capable of a particular happineſs, by the particular affections belonging to its nature.

In order to this, it is plain we muſt enquire what affections belong to our nature. For nothing can be more evident, than that without particular affections no object could give us more pleaſure than another, or to ſpeak more properly, nothing could give us pleaſure or pain: And the happineſs of any one particular nature can only be the happineſs or good of that particular nature. The happineſs of an inſect, for example, can only make an inſect happy: Another nature, that is, a nature conſiſting of other affections, will require other objects to make it happy; that is, objects adjuſted to the gratification of its particular affections. Theſe things are very evident: For tho' after having experienced ſeveral particular pains and pleaſures, we can form to ourſelves a general idea of happineſs, and a general idea of miſery, which ideas will excite a general deſire of happineſs, yet there is no ſuch thing in nature as general gratification to general deſire of happineſs. Every pleaſure is a particular pleaſure; a particular gratification to ſome particular affection. We may be properly ſaid to deſire happineſs in general; but every gratification we meet with, is a gratification to ſome one particular appetite or affection in our nature. As our eyes are ſaid to be ſo formed as to receive pleaſure from colours; but yet it is always ſome particular colour or mixture of colours that gives us that pleaſure we call pleaſure ariſing from colours; ſo it is with regard to all other pleaſures. We may claſs pleaſures under different general names, and ſay very intelligibly, we would have pleaſure of ſuch a ſort; but in order to have our longing ſatisfied, ſome particular object muſt be applied to ſatisfy it: Or we may ſay more generally, we would have pleaſure without fixing ſo much as upon a general claſs of pleaſures, as pleaſures of ſight, of hearing, of ſmell, *&c.* But ſtill it muſt be ſome particular object, ſuited to ſome particular affection, or particular ſenſe of pleaſure in our nature, that ſatisfies us in this undetermined longing or reſtleſneſs of the mind. In fine, however much philoſophers talk of a general deſire of happineſs, and of our being actuated by this deſire, which is properly called *ſelf-love*, in all our purſuits; yet it is particular objects, adjuſted to certain particular affections in our nature, that conſtitute our happineſs. And it is only by gratifying ſome one of theſe particular affections that we can have pleaſure. Nor is it leſs evident that all our particular affections reſt each in its object. "The very nature of affection (ſays an excellent writer) conſiſts in tending towards, and reſting on its objects as an end. We do indeed often in common language ſay, that things are loved, deſired, eſteemed, not for themſelves, but for ſomewhat further, ſomewhat out of and beyond them; yet in theſe caſes, whoever will attend, will ſee that theſe things are not in reality the objects of the affections, *i. e.* are not loved, deſired, eſteemed, but the ſomewhat further out of and beyond them. If we have no affections which reſt in what are called their objects, then what is called affection, love, deſire, hope, in human nature, is only an uneaſineſs in being at reſt, an unquiet diſpoſition to action, progreſs and purſuit, without end or meaning. But if there be any ſuch thing as delight in the company of one perſon rather than of another, whether in the way of friendſhip, or mirth and entertainment, it is all one, if it be without reſpect to fortune, honour, or increaſing our ſtores of knowledge, or any thing beyond the preſent time; here is an inſtance of an affection abſolutely reſting in its object as its end, and being gratified in the ſame way as the appetite of hunger is ſatisfied with food. Yet nothing is more common than to hear it aſked, what advantage a man hath in ſuch a courſe, ſuppoſe of ſtudy, particular friendſhips, or in any other; nothing, I ſay is more common, than to hear ſuch a queſtion put, in a way which ſuppoſes no gain, advantage, or intereſt, but as a means to ſomewhat further: And if ſo, then there is no ſuch thing at all as a real intereſt, gain or advantage. This is the ſame abſurdity with reſpect to life, as an infinite ſeries of effects without a cauſe is in ſpeculation. The gain, advantage or intereſt conſiſts in the delight itſelf ariſing from ſuch a faculty's having its object: Neither is there any ſuch thing as happineſs or enjoyment but what ariſes from hence. The pleaſures of hope and of reflexion are not exceptions. The former being only this happineſs anticipated, the latter the ſame happineſs enjoyed over again after its time. Self-love, or a general deſire of happineſs, is inſeparable from all ſenſible creatures, who can reflect upon themſelves, and their own intereſt or happineſs, ſo as to make that intereſt an object to their minds. But ſelf-love does not conſtitute this or that to be our intereſt or good; but our intereſt or good being conſtituted by nature, and ſuppoſed, ſelf-love only puts upon gaining, or making uſe of thoſe objects which are by nature adapted to afford us ſatisfaction. Happineſs or ſatisfaction conſiſts only in the enjoyment of thoſe objects, which are by nature ſuited to our ſeveral particular appetites, paſſions and affections. And there is therefore a diſtinction between the cool principle of ſelf-love, or general deſire of our own happineſs, as one part of our nature, and one principle of action, and the particular affections towards particular objects as another part of our nature, and another principle of action, without which there could be abſolutely no ſuch thing at all as happineſs or enjoyment of any kind whatſoever." * From all which it follows, 1. That it is abſurd to ſpeak of ſelf-love as engroſſing the whole of our nature, and making the ſole principle of action. And, 2. That in order to know what we ought to purſue, or what happineſs we are capable of, it is abſolutely neceſſary to know our particular affections which conſtitute our capacities of enjoyment or happineſs, and the objects adapted by nature to them.

But why we have inſiſted ſo long on this obſervation, will appear when we come to mention ſeveral of our particular affections and their objects.

Sect. VI.

The particular affections belonging to human nature.

Now, if we attend to ourſelves, we ſhall find that we have affections of various kinds. 1. Affections to ſeveral ſenſible objects, adapted by nature to give us pleaſure, which may be called *ſenſitive appetites*, ſome of which are abſolutely neceſſary to put us upon purſuits requiſite to our ſuſtenance, or the ſupport and preſervation of our bodily frame, ſuch as hunger and thirſt, *&c*: and others which are not ſo neceſſary to that end, but are given us to be capacities of enjoyment, ſuch as the pleaſures we receive from light and colours by the eyes, and from ſounds by the ear, *&c*. About theſe affections there is no diſpute. 2. But theſe are not the only affections belonging to our nature. We have other affections which are called *intellectual*: ſuch as, a capacity of receiving pleaſure by the diſcernment of the relations of ideas or things by our underſtanding or reaſon, properly called the perception of truth, or knowledge; a taſte or ſenſe of beauty, which may be defined to be that agreeable perception which objects that have uniformity amidſt variety or regularity and unity of deſign, are adapted to afford us, *&c.* And, 3. Beſides theſe there is yet another claſs of affections, which may be juſtly called *ſocial.* Inclination to union and ſociety, delight in the happineſs of others, compaſſion toward the diſtreſſed or ſuffering, reſentment againſt injuſtice or wrong, love of eſteem or good reputation, deſire of power to help and aſſiſt others, gratitude to benefactors, deſire of friendſhip, and ſeveral other ſuch like, which have ſome things in our fellow creatures for their objects. I do not pretend that this is a full enumeration of all the particular affections belonging to human nature. Some others ſhall be mentioned afterwards. But I am apt to think the principal affections conſtituting our nature, or our capacities of gratification and enjoyment, will be found to be reducible into one of theſe three claſſes. And let me obſerve with regard to them, before we go further, 1. That the greater part of theſe affections reſt in ſome external object, and may therefore properly be ſaid to have ſomething without ourſelves for their object, towards which they tend. As hunger hath food for its object, ſo hath the love of arts, arts for its object, and the love of reputation, reputation for its object; and as none of theſe objects is more or leſs external than another, and none of theſe affections is more or leſs diſtinct from ſelf-love, or the general deſire of happineſs, than another; ſo benevolence, or delight in the good of another, hath an object which is neither more nor leſs external than the objects of thoſe other above-named affections; and is an affection which is neither more nor leſs diſtinct from ſelf-love than theſe other affections. And therefore all the grave perplexity with which moral writings have been tortured with reſpect to the intereſtedneſs and diſintereſtedneſs of certain affections, might as well have been objected againſt any other affections as againſt thoſe, the reality of which it hath been thought ſufficient to explode, to ſay, that if they are allowed to take place in our frame, then would there be a diſintereſted principle of action in the nature of a being, which like every ſenſible being, can only be moved by ſelf-love, or regard to itſelf, which is abſurd. It is ſufficient to evince the impertinence and abſurdity of this jangling, to ſhew that by the ſame argument it may be proved, that we have no affections which tend towards and reſt in external objects. And yet it is certain, that had we not particular affections towards external objects, there could abſolutely be no ſuch thing as happineſs at all, or enjoyment of any kind. If by ſaying that all our affections muſt be intereſted, and that none of them can be diſintereſted, be meant that they are our own affections, and that the gratifications they afford us are gratifications to ourſelves, our own pleaſures, or our own perceptions, then are all our affections in that ſenſe equally intereſted; they are all equally our own, for they are all equally felt by ourſelves. But if by ſaying none of our affections are or can be diſintereſted, they meant, that none of our affections can tend towards, or reſt in an external object: This to ſay, not merely that the good of others cannot be the object of any affection in our nature; but to ſay that nothing without us can be the object of our deſire, whether animate or inanimate, which none will aſſert. This I mention, becauſe all the arguments brought by certain philoſophers againſt a principle of benevolence in our nature, turn upon an imagined contrariety between ſuch a principle and ſelf-love, as a principle of action. But, 2. It is in the gratifications of theſe particular affections in our nature, that the greater part of the enjoyments of which we are made capable by nature conſiſts. And therefore, if we would know the laws or connexions of nature with regard to our happineſs, we muſt know the eſtabliſhed laws or connexions of nature with regard to theſe affections, and the objects adapted to them. That is, we muſt know in what manner and to what degree they give pleaſure to us; what are the conſequences of indulging any one of them too little or too much; the ſeveral tones and proportions nature hath preſcribed to them, by fixing the boundaries of pain and pleaſure; their relations one to another; their agreements or diſagreements; their jarrings and interferings, or coalitions and mixtures; and, in one word, as many of their effects and conſequences in different circumſtances of action, as we can obſerve, in order to know how to regulate them, ſo as to have the greateſt pleaſure and the leaſt pain we can. The rules of our conduct, in order to have happineſs, can only be deduced from the laws or rules, according to which, in conſequence of the frame and conſtitution of our minds, and the relations we ſtand in to external objects, our particular affections operate, or are operated upon by objects, or by one another.

Sect. VII.

It is the buſineſs of reaſon to know the nature of our affections, their objects, and the manner and conſequences of their various operations.

Now, it is the buſineſs of our reaſon to find out theſe rules or laws of nature, and the rules of conduct which they indicate or point out to us. Reaſon is as plainly given us for this purpoſe, as our eyes are given us for ſeeing. It is the eye of the mind which is to look out for us in order to direct our paths, *i. e.* to diſcover what we ought to purſue, and what we ought to avoid. It muſt be given us for this purpoſe. And if we do not exerciſe it to this purpoſe, it is of no uſe to us. It cannot be owned to be implanted in us, without owning that it is the intention of nature that it ſhould be exerciſed by us as our guide and director. Nor is there indeed any other way by which beings can be guided, who have reaſon to diſcover how they ought to regulate their affections and actions, that is, how their happineſs requires that they ſhould regulate them, beſides their reaſon. Their nature admits of no other guidance. For in this does the difference conſiſt between them and other beings, which have no reflecting or guiding principle, but are led by mere impulſe toward an end, without foreſight, intention or choice, that they have the direction of themſelves; and being endued with a principle of obſervation and reflexion, are left to its guidance. Beings without reaſon are directed, or rather driven by particular affections excited in their minds to purſuits, which can in no ſenſe be called their purſuits, but are properly the purſuits of the principle by which their affections are excited in them. But beings who have a reflecting and guiding principle in them, are ſo conſtituted that they may and muſt guide themſelves; and therefore their particular affections muſt neceſſarily be conſidered as ſubjected by their frame to their guiding principle as ſuch. Their directing principle muſt be conſidered as the ſuperior and chief principle in them, and that to which the direction, the rule, command or guidance of all their particular affections, is committed by nature. And indeed, if we attend to our own minds, we ſhall find, 1. That our reaſon claims a ſuperiority to itſelf, and talks to us (if I may ſo ſpeak) with the authority of a lawgiver or ruler. It often, whether we will or will not, takes to itſelf the power and authority of a judge, a cenſor, and pronounces ſentence upon our conduct. And, 2. We are ſo framed that our greateſt inward ſatisfaction depends upon the approbation of our reaſon, or our conſciouſneſs of our acting by its direction, and in conformity to its rules. Nothing gives us ſo much torment as the conſciouſneſs of deſpiſed and contradicted reaſon: and no pleaſure is equal to that the mind feels when reaſon approves its conduct. The approbation with which a mind, conſcious of its habitually giving the authority due to its guiding principle in the government of its affections and actions, applauds itſelf, is ſincere and abiding ſatisfaction. So are we made; And therefore,

The firſt law of nature with regard to our conduct, is to maintain reaſon in our mind as our guiding principle.

The firſt law of nature with regard to our conduct, is to maintain reaſon in our mind as our governing principle over all our affections and purſuits. It was ſaid before (§ 3.), that we are under a neceſſity of knowing the connexions relative to our happineſs, in order to conform our conduct to them, and under a neceſſity of conforming our conduct to them in order to be happy. And we have juſt now ſeen what that principle is which is given us by nature, both to diſcover the connexions relative to our happineſs, and to conform our conduct to them. Whence it follows, that according to our frame, we can neither be ſure of avoiding evil, nor attaining to good, unleſs reaſon be our ſteady ruler; which implies two things. 1. That we be at due pains to know the connexions relative to our happineſs, and to lay up this knowledge in our minds, in order to have counſel at hand upon every emergency; in order not to be ſurprized, and to have our directory to ſeek, when occaſion calls upon us immediately to determine and act. And, 2. To accuſtom our particular affections to ſubmit to, and receive their commands from our reaſon; not to ſally forth at random upon every invitation offered to them by objects, but to await the deciſion of our reaſon, and to obey it. The firſt is the hability or ſufficiency of reaſon to direct. The other is its actual command. And that reaſon may be very well informed, and conſequently very well qualified to direct us, and yet not be actually our ruler and commander, but a ſlave to our headſtrong paſſions, is too evident to experience to be denied. Nor is any one who hath ever given any attention to his own mind, a ſtranger to the only way in which reaſon can become our habitual ruler and guide, and our affections become habitually ſubject to its government, which is the habitual accuſtomance or inurance of our appetites, affections and paſſions, to receive their orders from our reaſon, or the habitual upholding of our reaſon in the exerciſe of directing all our purſuits. And indeed to what purpoſe can the knowledge qualifying reaſon to direct our affections ſerve, but to upbraid us, if reaſon be not actually our habitual director; if our paſſions are quite tumultuous and undiſciplined, and reaſon hath no power over them, to reſtrain, direct, or govern them? This therefore is the firſt law of nature pointed out by our conſtitution, and the neceſſity of nature, even to ſet up and maintain our reaſon as our governing or directing principle. Till this be done we are not maſters of ourſelves; and however well any one's affections may happen to operate, in conſequence of a particular happineſs of conſtitution, or in conſequence of his neceſſary ſubmiſſion to others upon whom he depends, none can have a title to the character of rational, but in proportion as his own reaſon is his director and ruler; in proportion as his paſſions are ſubmitted to reaſon, and he acts in obedience to its authority. But this rational temper may be called by different names, as it is conſidered in different views. It is prudence, as it diſcerns the connexions relative to our happineſs, and the rules of our conduct reſulting from thence. It is virtue or ſtrength of mind, as it enables one to hold his paſſions in due diſcipline and ſubjection, and to act as prudence directs. It is ſelf-love, as it is firm and ſteady adherence to the rules of happineſs. It is ſelf-command, as it is empire over ourſelves, dominion over our affections and actions, all our choices and purſuits. And it is health or ſoundneſs of mind, as thus all our affections and appetites are in their regular, natural

tural and proper order, *i. e.* duly ſubmitted to the principle to which the authority of guiding them is due. It is indeed the whole of virtue, human excellence or duty, as this empire being once obtained, all muſt go right; every affection will be duly obedient to the principle that ought to govern; and thus the mind will be conſcious to itſelf of inward order and harmony, and of being in the ſtate it ought to be in: for no other general definition of human excellence or duty can be given, but acting conformably to reaſon. But ſtill it remains to be enquired what general rules for our conduct reaſon diſcovers to us.

Sect. VIII.

It ought to be the end of education to produce the patience of thinking, or the government of reaſon.

We may however obſerve, before we go farther, 1. That unleſs the mind be early rendered of a temper for thinking and enquiring about the proper rules of conduct, it will not ſet itſelf to find them out, but will give up the reins to its affections, and be toſſed to and fro by them in a moſt deſultory irregular manner; and the longer this unthinking way of living takes place, the more difficult will it be to recover the mind from the tyranny of its paſſions, and to eſtabliſh reaſon into its due authority and command over them. And therefore the great end of education ought to be to produce the love and patience of thinking; to eſtabliſh the deliberative diſpoſition and temper, or the habit of conſulting reaſon, and weighing things maturely before one chooſes and determines. This is the chief end of education. And if one be not obliged to wiſe education for this happy temper of mind, it ſeldom happens that one ever attains to it, till he is awakened and rouſed to think, by ſome great ſuffering brought upon himſelf, by his not having exerciſed his reaſon, but ſuffered his paſſions and appetites to drive him whitherſoever they liſted. The reaſon is, that by repeated acts, habits are formed, which it is exceeding difficult to undo, and which cannot be undone but by the ſtrong oppoſition of reaſon. And therefore, if the habit of ruling ourſelves by reaſon, be not early formed in us by right education; the habit of indulging every paſſion and appetite that aſſails us, and of living without exerciſing our reaſon, muſt ſoon become too fixed, ſettled and inveterate to be eaſily conquered. It is fit, highly fit, nay abſolutely neceſſary for us, that the law of habits ſhould take place in our conſtitution. Yet this muſt be the effect of it, that unleſs great care be taken, by proper education and diſcipline, early to form the reflecting and conſidering habit, in young minds, which is to eſtabliſh the government of reaſon in them, it muſt be extremely difficult for us ever to become reaſonable creatures, or to attain to ſelf-command, and to eſtabliſh our reaſon as our ruler and guide, in the room of appetite, humour and paſſion. Mr. Locke hath made admirable obſervations on this ſubject, in his excellent treatiſe of education.

When this temper is formed, happineſs and duty are eaſily diſcovered.

But, 2. When the love and patience of thinking are once attained, and the ſedate, deliberative temper is fairly eſtabliſhed, it is then very eaſy to find out the proper rules of action, or what is the moſt eligible courſe of life and behaviour, and how the affections ought to be governed. The affections then range themſelves, as it were, ſpontaneouſly into good order. The underſtanding is then clear and undiſturbed, and duty is eaſily diſcerned, Whatever difficulty reaſon may find in eſtabliſhing its authority, it is no ſooner fixed and ſettled in the mind, as the ruling and commanding principle, than the rules which ought to be obſerved in conduct are immediately diſcovered. True happineſs is then immediately felt to conſiſt chiefly in the very conſciouſneſs of this temper, in the conſciouſneſs of reaſon's having this ſway within us. And when this is looked upon to be the chief part of happineſs, the chief part of our happineſs is then ſomething dependent upon ourſelves, which nothing can deprive us of, while reaſon preſides and rules in our breaſt. A ſource of inward conſolation, far ſuperior to all other enjoyments, and which is as ſteady as all other things are uncertain, is thus diſcovered. And the mind, which hath once fixed upon this as its main good, will be proof againſt all the moſt ſpecious appearances of pleaſures, till their pretentions have been examined, and their conſiſtency with this chief principle of happineſs hath been duly conſidered; and will therefore be a calm and impartial judge of what pleaſures it may allow itſelf, and of what it ought not to give indulgence to. But if the mind be calm and unbiaſſed, and reſolved to act the part that ſhall appear wiſeſt and beſt upon due attention to the laws of nature fixing the connexions relative to our happineſs, the whole difficulty is over. Till then it is not capable of judging; but when that point is gained, it is very eaſy to judge right. In every caſe, not to judge, but to be fit to judge, is the difficult part. The firſt thing therefore that our frame and conſtitution points out to us as the law of our conduct, is to take care to eſtabliſh reaſon in our mind, as the ruler, without conſulting which we will not allow our paſſions to indulge themſelves, and the dictates of which we are reſolved ſteadily to obey, that we may always enjoy that delightful conſciouſneſs of having been guided by our reaſon, which is by our make the greateſt of all enjoyments. But to this education ought, and muſt contribute; otherwiſe the eſtabliſhment of this excellent temper, in proportion to the prevalence of which one is more or leſs a reaſonable being, muſt be a very difficult, a very hard taſk; and to aſſiſt in conquering the contrary habit, diſtreſs and ſuffering will be neceſſary. And why ſhould we not look upon the evils that are brought upon ourſelves by thoughtleſsneſs, folly, or, in one word, by not governing ourſelves by reaſon, to be intended chiefly for this very end; even to awaken, rouze, and excite us to think, by making us feel the neceſſity of exerciſing our reaſon, and obeying it, inſtead of indulging every appetite that aſſails us, without conſidering the conſequences of living in ſuch an irrational manner! For this is ſelf-evident, that were not agents placed in a ſtate where certain manners of acting produce good, and others evil, there would in ſuch a ſtate be no place for choice and agency; for prudence and imprudence; nor conſequently, for reaſon and ſelf-approbation. And therefore to the exiſtence of the higheſt rank of created beings, it is neceſſary that certain methods of acting be attended with evil conſequences. For tho' we may, by adding more and more to our own active powers, conceive various ſpecies of created agents above us, till we riſe in our contemplation to the Supreme Being, in whom all perfections meet, and are united in their higheſt degree; yet we can conceive no order of beings above mere paſſive ones, without conceiving them to be diſpoſers of their own actions by their reaſon, underſtanding and choice: And as for more or leſs, *i. e.* a larger or leſſer ſphere of activity, here the known rule take place, *That more and leſs do not alter the ſpecies.* If any one ſhould aſk what the proper method of education is in order to produce the reaſonable thinking temper? it is ſufficient to anſwer here, that the chief buſineſs is to accuſtom youth early to examine the aſſociations of ideas in their minds, and to conſider whether theſe aſſociations be founded in, and agreeable to nature, or not; which ought to be the unintermitted exerciſe during life of every one who would maintain the empire of his reaſon. But becauſe this would lead me into a digreſſion, or rather into a ſubject, for which we have not yet ſufficiently prepared the way, we ſhall only refer thoſe who aſk this queſtion to the above mentioned treatiſe of Mr. Locke, and go on to take notice of ſome particular laws of our conduct, pointed out to us by the make of the human mind, and the circumſtances in which we are placed by the Author of nature.

Sect. IX.

The firſt particular law which appears to thoſe who conſider the nature and circumſtances of mankind is the law of induſtry.

The pleaſures we are capable of, are gratifications to our particular affections, the principal of which have been named (§ 6) ; for hardly can any enjoyment we are ſuſceptible of, be ſpecified, which is not a gratification of one or other of theſe outward or inward faculties or ſenſes of pleaſure. Our pleaſures may therefore be divided into two claſſes ; the goods of the body, and the goods of the mind. For all our affections, all our ſenſes of pleaſure, either have ſome ſenſitive, or ſome intellectual and moral gratification for their objects. Gratification to our eyes, our ears, our touch, and our other organs of ſenſe, are bodily gratifications. Gratifications to our diſcernment of truth, and our delight in it ; to our taſte of beauty and harmony and delight in it ; to our public ſenſe, or our delight in the happineſs of others, &c. are gratifications to capacities, ſenſes of pleaſure, or affections, which, to diſtinguiſh them from thoſe afforded by corporeal objects to our ſenſitive organs, may be called *intellectual* or *moral*, or *goods of the mind*. But however the goods or pleaſures we are capable of be divided or claſſed, this is certain, with regard to them all, that they are made to be the purchaſe of our activity or induſtry to have them ; they do not drop into the mouth (if we may ſo ſpeak) of the ſluggard ; but we muſt exert ourſelves to attain to them. As we cannot otherwiſe have the pleaſures of ſenſe, or the goods of the body ; ſo no more can we, without induſtry and application, have the pleaſures of knowledge, refined taſte, benevolence, &c. And hence that antient obſervation concern-

Industry.

ing the government or frame of the world with reſpect to man; θεοι τἀγαθα τοῖς πονοις πολοῦνται. *God or nature ſells all to induſtry.* This truth is ſo plain to daily experience, that we need not ſtay to prove it. But from this general law of nature ariſes a law to us, *viz.* the law of induſtry; or the neceſſity of our activity, application or induſtry, in order to attain to any goods. And if we will reflect a little upon our minds, we ſhall find, that as no goods can be attained by us, but by exerting ourſelves actively to have them; ſo activity or exerciſe is neceſſary to our happineſs in another ſenſe, *i. e.* immediately, or in itſelf. The mind of man is made for exerciſe, exerciſe is its natural pleaſure. It is of a reſtleſs temper, and muſt be employed. If it is not, it preys upon, and conſumes itſelf. Nor is exerciſe leſs neceſſary to the health, ſoundneſs, vigour, and agreeable feeling of the body, than employment is to the ſtrength, agility, ſoundneſs, and pleaſant ſtate of the mind. We need not inſiſt long to prove this; for daily experience ſhews, that as it happens among mankind, that whilſt ſome are by neceſſity confined to labour, others are provided with abundance of things by the induſtry and labour of others; ſo if, among the ſuperior and eaſy ſort, who are thus relieved from bodily drudgery, there be not ſomething of fit and proper employment raiſed in the room of what is wanting in common labour; if, inſtead of an application to any ſort of work, ſuch as hath an uſeful end in ſociety (as letters, ſciences, arts, huſbandry, public affairs, &c.) there be a thorough neglect of all ſtudy or employment, a ſettled idleneſs, ſupineneſs and inactivity; this does of neceſſity occaſion a moſt uneaſy, as well as diſorderly ſtate of mind; a total diſſolution of its natural vigour, which ends in peeviſhneſs, diſcontent, and ſeekly nauſeating at life, and all its enjoyments. So neceſſary is ſome employment to the mind, that to ſupply exerciſe to it, many ſtrange amuſements and unaccountable occupations for time thought and paſſion have been invented by thoſe, whom fortune hath reſcued from drudgery to their backs and bellies, but good education hath not directed into proper purſuits and employments, which are their only ſecurity againſt utter diſcontent with themſelves, and every thing about them, amidſt the greateſt abundance. Such ſtrange occupations are their ſole relief. But they are ſuch only as they are ſome exerciſe to the mind, and prevent that languiſhing, fretting and nauſeating, which total ſupineneſs and eaſe produces. And how feeble a ſecurity they are againſt the miſery, which employment more ſuited to a mind capable of higher purſuits would abſolutely prevent, is plain from the many bitter, ſickly, diſcontented moments the men of pleaſure, as they are abſurdly called, cannot, by all their amuſements, eſcape, compared with the equable contentedneſs of an honeſt daily labourer, conſcious of the uſefulneſs of his toil; not to mention the ſedate, uniform ſatisfaction and cheerfulneſs of one, who having qualified himſelf for it, divides (as Scipio is ſaid to have done) his time between elegant ſtudies and public ſervices to his country. The mind of man muſt have exerciſe and employment. Exerciſe itſelf is agreeable, and it is abſolutely neceſſary to relief from the greateſt of uneaſineſſes. And no goods can be attained without application and induſtry. If one would preſerve his health and reliſh for ſenſitive pleaſures, he muſt exerciſe his body. And if he would have the pleaſures of knowledge, of refined imagination and good taſte, the pleaſures of power and authority, or the pleaſures of benevolence and doing good, he muſt be diligent in the culture of his moral powers, and be ever intent upon ſome truly uſeful purſuit. If theſe ends do not employ him, he muſt either find other purſuits for himſelf, or he will be exceedingly unhappy. But what other purſuits can one deviſe to himſelf beſides thoſe of which he can ſay any thing better, than that they employ his mind, and keep time from hanging upon his hands, as the phraſe is, or, more properly ſpeaking, murder it? Can he name any other beſides thoſe that bear any congruity to the more noble and diſtinguiſhing powers and affections of the human mind? or that he can depend upon for ſteady and uncloying ſatisfaction? any other that can be re-enjoyed by reflection? any other that will ſtand a cool and ſerious review and examination?

But that I may not be thought to proceed too faſt in my concluſions, and to have determined concerning the comparative value of purſuits too haſtily, all I deſire to have concluded at preſent, is, that according to the conſtitution of the human mind, and in conſequence of the natural ſtate of things, no goods, no enjoyments can be procured by us without application and induſtry, and that we are made to be buſied and employed for exerciſe, or to be engaged in ſome purſuit. The greateſt abundance of outward things, tho' it relieves from certain toils, to which the neceſſities of life ſubject others; yet it does not, it cannot make one happy, if, in the room of the purſuits from which it delivers him, he do not find out ſome other ſatisfactory purſuit or employment for himſelf. Under this neceſſity hath nature laid us; nay, properly ſpeaking, this neceſſity conſtitutes our dignity above inactive, or merely paſſive creatures, as free agents. For it is implied in the very notion of agency. One cannot otherwiſe be an agent, than as he is made to procure his happineſs to himſelf by the active application of his powers in the purſuit of goods within his reach, if laboured for according to the way nature hath fixed and chalked out for attaining to them. And as the pleaſure of conſidering goods as one's own acquiſition, is a pleaſure that a being muſt be ſo framed to have; ſo this is a very high ſatisfaction, and an excellent natural reward to induſtry. How inſipid are the ſatisfactions in which this is not an ingredient, in compariſon of thoſe which one owes to his own ſkill, prudence and induſtry, and in which he therefore triumphs as his own purchaſe, his own conqueſt, the product of his own abilities and virtues! 'Tis only beings ſo framed as that they muſt work out their own happineſs, who can be capable of ſelf-approbation. And who doth not feel the difference with which one reflects on the goods which are not of his own procurance to himſelf, ſuch as beauty and the advantages of birth, for inſtance, and thoſe accompliſhments which he can vindicate to himſelf as his own proper purchaſe? And where ſelf-approbation can take place, there only can good deſert, with regard to others, take place; or can there be any foundation for praiſe and eſteem from others, without which, how dull and inſipid would life be? This is is the general voice of mankind.

Ergo ut miremur te, non tua, primum aliquid da
Quod poſſim titulis incidere præter honores
Quos illis damus, & dedimus, quibus omnia debes.

Thus far then are we advanced in finding out the connexions or laws of nature with regard to our happineſs. We are made to work out our own happineſs by our induſtry; we are made for activity and exerciſe. But how ought our induſtry to be directed, in conſequence of what hath been obſerved concerning the preſidence which reaſon ought to have in our minds (§ 8)? Muſt not the objects of our induſtry be choſen by reaſon, and all our exerciſes directed by it, in order to our having the ſatisfaction of reflecting upon our exerciſe as conformable to reaſon; and that it may be agreeable to the connexions of nature relative to our happineſs; and ſo prove neither vain nor hurtful but turn to good account, and not produce repentance and ſuffering for having miſtaken our end, and miſapplied our labour and diligence; but contentment with ourſelves for having acted with prudence, by the direction of reaſon for an approveable end, and in the proper manner for attaining that end. This therefore is one characteriſtic of our proper happineſs, that it conſiſts in a courſe of induſtry to attain ends which reaſon approves, under the direction and guidance of reaſon, as to the uſe of means.

Sect. X.

The ſecond particular law that appears from the conſideration of human nature, and the circumſtances in which mankind are placed, is the law of ſociality.

But another ſpecial characteriſtic of our proper purſuits, in conſequence of our frame, and the connexions of nature relative to our happineſs, will immediately appear, if we reflect how ſtrictly mankind are bound together; by how many cloſe ties and dependencies they are cemented; ties ariſing from mutual wants, and ties ariſing from certain affections common to mankind, exactly correſponding to their mutual wants. Firſt of all, it is evident, that we can attain to no goods of whatever kind, external or internal, by our ſingle induſtry, or without ſocial aſſiſtances. Nothing can be more manifeſt than this. 2. Nor is it leſs evident, that there is no enjoyment, of which mankind are capable, which does not, as our excellent poet very happily expreſſes it, *Some may lean and hearken to our kind.* If we ſeparate communication and participation from all our pleaſures of whatever kind, we really abſtract from them the main ingredient that gives them reliſh. Take all of the ſocial kind away from ſenſitive gratifications, and what remains but mere allay to ſome raging appetite, mere relief from pain? And as for all our other pleaſures, what are they but participation, or communicating and ſharing with our fellow creatures? Such is the joy of relieving the diſtreſſed, or of promoting the happineſs of the deſerving.

Sociality

Such

Such is a ſenſe of merited eſteem; ſuch is gratitude to a benefactor; ſuch is creating dependence upon us, &c. And as for knowledge, however pleaſant it is in itſelf, yet is it not doubly agreeable, when conſidered as qualifying us to be uſeful, and as procuring us authority and regard? In ſhort, the chief article in all our pleaſures, in conſequence of our make, conſiſts in mutually giving and receiving; it is of a ſocial kind. And we are formed, and placed as we are, that there might be variety of exerciſe to our ſocial affections. Nature hath ſo framed us, that our chief happineſs muſt be ſought from communication and participation with others; and ſo placed us, that all ſuch dependencies might ariſe as were neceſſary to gratify our ſocial appetites and affections. This will more fully appear afterwards, when we come to conſider ſome of the principal dependencies by which mankind are united and cemented together; which, tho' they be objected againſt by narrow thinkers, will be found to be in reality ſo many proofs of nature's kind care about us; or to make proper proviſion for the exerciſes, from which alone our ſocial happineſs, or gratification to our ſocial affections can ariſe, ſince it muſt conſiſt in mutual giving and receiving, which cannot take place but where there are mutual dependencies. Mean time, let it only be obſerved, 1. That ſuch is the conſtitution of things with reſpect to mankind, that no man can attain to any conſiderable ſhare of the goods either of the body or of the mind by his ſingle endeavours; but he muſt, in order to that, engage many others to help and aſſiſt him: nay, ſuch is the conſtitution of things, that no man can ſubſiſt in any convenient, not to ſay comfortable degree or manner, without receiving many ſervices and good offices from others. Mankind are therefore, by the neceſſity of nature, obliged to ſeek mutual aſſiſtances from one another, to unite together, and to communimunicate their induſtry. But, 2. Mankind are ſo framed, that this union and communication is in itſelf as agreeable as it is neceſſary. Our beſt enjoyments are acts of ſocial communication. Aſſiſting, relieving, herding, concerting, confederating, and ſuch like ſocial dealings, are all of them in themſelves moſt pleaſing and agreeable exerciſes. So that there is ſomething in them that rewards them, and invites to them independently of their neceſſity to our having any of the conveniencies or comforts of life. Need I ſtay to prove this to any one who hath ever felt any of the generous emotions and workings of the ſoul? or to any one who can reflect upon his having at any time done a good office? For nothing is more certain, than that it is only acts of compaſſion, humanity, friendſhip, gratitude, benevolence, that afford any conſiderable ſatisfaction to the mind upon reflexion; or that it is the generous mind alone that can reiterate its actions in its reflexion, memory, or conſcience, (let it be called what you will) with thorough delight; and thus feaſt moſt agreeably upon them after they are paſt. Indeed ſo ſocial is our make, that the higheſt entertainment even the poetic art or ingenious fictions can give us, is by exciting generous benevolent emotions in our minds, and deeply intereſting us in the affairs of others. For of the ſatisfaction we receive in this way, which we ſo readily own to be preferable to any mere ſenſitive enjoyment, no other account can be given but this; "*Homo ſum, & nihil humanum a me alienum puto.*" Whatever concerns man, tenderly intereſts every man in it, in conſequence of the human make. We are therefore formed by nature for ſocial exerciſes; for the purſuit of public good; for offices of benevolence or charity, and for uniting together in the interchange of various acts of kindneſs and ſociality.

And thus there appears another character of the happineſs and the employment or induſtry we are intended for by nature: It is induſtry beneficial to mankind, for which we are framed and intended: Induſtry proper to make human life as comfortable and agreeable as it can be rendered. For this is the induſtry or employment, which, in conſequence of our ſocial make, gives us the greateſt pleaſure. And this induſtry alone can give a ſatisfying account of itſelf to our reaſon. For this alſo is found to be true by experience, that no ſooner is the idea of induſtry beneficial to mankind, or of activity to relieve mankind from as many pains, and to give them as much pleaſure as we can; no ſooner is this idea preſented to our reflexion, than our mind is neceſſarily determined to approve of it, and pronounce it the beſt part, nay the only commendable, worthy part one can act. And therefore we have now attained to a very diſtinguiſhing characteriſtic of the pleaſures we ought to purſue, *i. e.* of thoſe which are made by nature of the higheſt, the moſt uncloying, ſatisfactory and durable reliſh to us, *viz.* exerciſes of our abilities or powers, which tend to promote the public good. If it is ſaid that there is no reaſoning in all this deduction, but ſimply appeal to experience: let me aſk how we can prove any quality, affection or power to belong to us, or any ſenſation to be pleaſant, but from experience? What are all the concluſions of natural philoſophers, but inductions from experience, the experience of our ſenſes? And is outward experience a proper proof of matters of outward experience; and inward experience not a proper proof of matters of inward experience? If it is objected, that experience proves that ſome men have high pleaſure in acts of cruelty and malice: to this I anſwer, the gradual degeneracy of the mind into ſavageneſs and malignity, can be accounted for from the laws according to which ſocial affections, and a moral or public ſenſe are impaired and corrupted. But that any degree of this ſtate of mind cannot be happineſs, is plain, ſince where there is a total apoſtacy, an abſolute degeneracy from all candour, equity and truſt, ſociableneſs or friendſhip, there is none who will not acknowledge the abſolute miſery of ſuch a temper of mind. For ſure here, as in other diſtempers, the calamity muſt of neceſſity keep pace and hold proportion with the diſeaſe, the corruption. It is impoſſible that it can be complete miſery, to be abſolutely immoral and inhumane, and not be proportionable miſery or ill, to be ſo in any however ſo ſmall a degree. And indeed, tho' there were no conſiderable ill in any ſingle exerciſe of inhumanity and unſociality, yet it muſt be contrary to intereſt, as it neceſſarily tends, in conſequence of the ſtructure of our minds, that is, the dependence of our affections, and the law of habits, to bring on the habitual temper, which is ſo readily owned by every one to be conſummate miſery, and to render incapable of any enjoyment, even amidſt the moſt luxurious circumſtances of ſenſitive gratification. But having inſiſted very fully on this ſubject in another treatiſe; and chiefly, becauſe it is impoſſible to ſet the ſociability of our nature in a clearer and ſtronger light than my Lord Shaftſbury has done, in his *Eſſay on virtue*, I ſhall only add, that if it be really true (as I think he has demonſtrated) that, in conſequence of the conſtitution of the human mind, and of the connexions relative to our happineſs, the affections which work towards public good do likewiſe work towards the greateſt good of every individual, then are we by a neceſſity of nature under obligation to be ſocial, humane, and well affectioned towards our kind: And conſequently, ſociality is a law of nature to us. For this being the caſe, in it hath nature, whoſe conſtitutions we cannot alter, placed our chief happineſs. But this general truth will be yet more evident, when we conſider the particular dependencies by which mankind are ſtrictly linked and tied together;

Sect. XI.

The natural and neceſſary dependence of mankind, points out to us the order in which our ſocial affections ought to operate.

Which we now proceed to point out, that we may ſhew the particular order in which nature at once impels and obliges us to exerciſe and gratify our ſocial affections. Nature may, as we have already ſeen, be very properly ſaid to oblige, or lay us under a neceſſity of regulating our affections and actions in the way that the conſtitution of our mind, and the circumſtances in which we are placed, make neceſſary to our happineſs. And nature may be ſaid to impel us to exert our affections in the way in which they naturally tend to work or exert themſelves. And if we attend to our affections, and the order in which they naturally tend to operate or exert themſelves, we will find that it is that very order which our conſtitution and circumſtances make neceſſary to our well-being and happineſs; ſo exactly are our conſtitution and our circumſtances adapted the one to the other. It is plain that ſocial affections could not have their proper exerciſes, except where many mutual dependencies take place; becauſe giving and receiving, or communication, can not take place but where there are mutual wants. Now, our mutual wants and dependencies muſt be wants and dependencies either with reſpect to the goods of the body, or the goods of the mind. For all our goods, as hath been obſerved (§ 9), are reducible into theſe two claſſes: Wherefore, mutual wants and dependencies in theſe reſpects, are neceſſary to the exerciſes of our ſocial affections, or to our ſocial enjoyments. Take away from mankind all the exerciſes of ſocial affection, and we reduce them into a ſtate of mere indolence and inactivity, and leave nothing in human life to employ men agreeably, or actuate them warmly or ſtrongly: We take away all that gives the higheſt reliſh to life, all its moſt touching and intereſting exerciſes and employments. But if we take away the objects of affections or exerciſes, we to all intents and purpoſes deſtroy the affections themſelves; for it is to all intents and purpoſes the ſame, whether they do not take place in a conſtitution, or taking place, have not objects to call them forth into action and employ them. The differences therefore which obtain among mankind, in conſequence of the different talents, genius's and temperatures of mind, or of different circumſtances, neceſſarily occaſioning different operations, various degrees and turns of the ſame powers and affections, do indeed ſerve to cement and unite mankind together, and to produce a conſtitution of things, in which alone our ſocial affections can have various proper exerciſes; a conſtitution of things, in which alone various ſocial enjoyments can take place. And therefore, with regard to us,

All nature's diff'rence keeps all nature's peace.

Several of theſe dependencies, and the affections correſponding to them explained.

This will be evident, if we but conſider what the affections and employments are which give us ſocial enjoyment. For how can benevolence, love of power, compaſſion, charity, gratitude, or any other affection, which hath the qualities, conditions, and actions of others for their objects, take place but where wants are ſupplied, dependence is created, happineſs is given; or where beings can mutually gratify one another in various manners, by mutually adding to one another's happineſs and enjoyment, or alleviating one another's pains? But it will ſtill be more evident, when we conſider the dependencies which actually obtain among mankind, and the affections in human nature, correſponding to theſe dependencies. Now, 1. In general, to the very ſupport of our bodies, many labours are neceſſary, and conſequently, various communications of labour: nor are various united labours leſs neceſſary to our having the pleaſures which ariſe from knowledge, and the improvements of the underſtanding and imagination.

gination. Theſe two facts are too evident to ſtand in need of any proof. And in order to our having enjoyments of both theſe kinds by united labours, mankind are endued with various talents, various genius's and turns of mind. Some are fitted for one kind of labour and employment, and ſome for another. Every one ſtands in need of many, and every one is peculiarly adapted by nature to aſſiſt the reſt in ſome particular way. It is in order to promote a general commerce among mankind, that through the whole globe, the habitation of mankind, every climate, every country, produces ſomething peculiar to it, which is neceſſary to the greater convenience, or at leaſt to the greater comfort and ornament of the inhabitants in every other. So in every country, throughout all mankind in general, there prevails a diviſion of talents, genius's and abilities, which makes every one neceſſary in a particular way to the general good, or at leaſt renders every one capable of contributing ſomething towards general happineſs, by the application of his talents in their proper way, or to the end for which they are peculiarly adapted. And indeed in the narroweſt view we can take of human happineſs, that is, even when we confine it to our bodily ſubſiſtence, to eating, drinking, protection againſt the injuries of weather, and ſuch other conveniencies, which will be readily acknowledged not to be all that mankind are qualified to have and enjoy, even tho' we ſhould quite abſtract from the higher purſuits of underſtanding and imagination, in the improvements of arts and ſciences, from every thing that comes under the notion of ornament, elegancy or grandeur; yet even in this confined view, many labours, various induſtry is neceſſary. And conſequently, men are laid by a neceſſity of nature under obligation mutually to engage one another, to unite their labours, and communicate their induſtry for one another's ſubſiſtence. But as men would have but very little pleaſure in labour, and the communications of their induſtry which are neceſſary to their ſubſiſtence, were not exerciſe, as hath been obſerved (§ 9), naturally agreeable to men, and were we not ſo conſtituted as to have immediate pleaſure in ſocial communication, in every ſocial exerciſe; ſo men, as we are conſtituted, cannot engage one another in mutual aſſiſtance, but by ſhewing each his willingneſs to aſſiſt the reſt, and his ſincere cordial regard to the well-being and intereſt of the whole body. Every one, in order to be liked and regarded by others, muſt at leaſt put on the ſhew of liking and regarding others; for one would otherwiſe be looked upon as a common enemy, and as ſuch be abandoned, nay, hated and perſecuted by all men. And let me juſt obſerve here, in oppoſition to thoſe who aſſert that there is not really any benevolence or regard to the intereſts of others in human nature, but that it is ſelf-love which aſſumes the affected appearance of it, in order to deceive, well knowing the neceſſity of ſeeming to love others, in order to be aſſiſted by them, as our neceſſities require. Let me obſerve, that were there not generally prevailing among mankind a real principle of ſociality and benevolence, this impoſition, this counterfeit regard to others, would not be able to anſwer its end. Were all men utterly devoid of any ſuch principle, and were the appearance of ſociality every where counterfeited, the falſe appearance would nowhere take; it would nowhere be believed, and nothing like truſt, or harmony and union could prevail among mankind, but they would live in continual jealouſies and ſuſpicions. So that of neceſſity it muſt be owned, that there is in the generality of mankind naturally a real principle of ſociality and benevolence. This is plain from the neceſſary effect of one's being diſcovered to have acted under a maſk of benevolence and honeſt regard to others; for in that caſe, hardly can any power or ſtrength ſuch a perſon may have acquired, protect him againſt juſt reſentment. Such a one muſt indeed be ſtrongly defended to ſecure himſelf againſt the condign vengeance of mankind. And whatever his power may be, in conſequence of his wrath and guards, or armies attached to him by his wealth, hanging upon him by the teeth (to uſe the phraſe of a very great author), yet he cannot avoid being hated by all the reſt, and he cannot be loved even by them who are thus tied to him: And conſequently, it is no wonder, that every one of this character, and in this ſituation with regard to mankind, in conſequence of his known character, hath ever been found moſt compleatly miſerable; tormented by galling fears, ſuſpicions and jealouſies. There never was a tyrant who was not in this terrible condition, as Cicero obſerves, Offices, book 2.

Dependencies and correſpondent affections conſidered.

Mankind then are not only under a neceſſity by nature of being ſocial, but they are actually provided with affections which make them ſuch, as well as with the various talents neceſſary to a variety of induſtry, and communication of induſtry. So that thus far nature obliges and impels to the ſame courſe of life, *viz.* a courſe of ſocial induſtry and communication, a courſe of honeſt and cordial interchanges of mutual aſſiſtances and ſervices. 2. But beſides this general dependence diffuſed throughout the whole ſpecies, there are dependencies of another kind among mankind, to which likewiſe there are correſpondent affections in human nature, that without ſuch dependencies would not have exerciſe or employment. The Author of nature hath ſpread over mankind a natural ariſtocracy, which appears in every aſſembly of mankind. Some are ſuperior in underſtanding to the greater part, in every caſual or deſigned meeting of men, conſiſting of ſuppoſe ten, twenty, or any other number. And what is the natural effect of this, in conſequence of the human

Aristocracy natural.

man frame? Superiority in wiſdom, by fitting to give proper counſel in matters of common concernment, naturally produces eſteem, veneration, ſubmiſſion, and gratitude in thoſe who feel the benefit of their ſuperior wiſdom, or to whom it ſerves as a light to direct them; that is, it gives authority to the men of ſuperior wiſdom; and it excites cordial dependence and confidence upon them in the breaſts of thoſe who reap the advantages of it. And thus thoſe who excel in wiſdom, have the pleaſure of having authority and reſpect paid to them. And thoſe who receive counſel and direction from them, have the pleaſure of being inſtructed by them, and the ſincere ſatisfaction which ariſes from gratitude and affection to benefactors, which is naturally ſo ſtrong, that it is hard to ſay who are happieſt, thoſe who give, or thoſe who receive. This we may obſerve, from the pleaſure with which youth receive information from a prudent affectionate teacher: and in general, from the warm and zealous affection with which perſons obliged attach themſelves to a wiſe and generous patron, follow his directions: and eſpouſe his intereſt.

Condition, circumſtance is not the thing:
Bliſs is the ſame, in ſubject or in king,
In who obtain defence, or who defend,
In him who is, or him who finds a friend.
Eſſay on man.

But let it be obſerved, that this is only the caſe while thoſe of ſuperior parts ſhew a ſincere regard in their counſels and directions to the general good; and do not attempt to deceive thoſe who depend upon them into hurtful meaſures, with a ſelfiſh narrow view. For ſo ſoon as that is perceived, veneration is changed into contempt and hatred. And thus the ſuperior in parts deprives himſelf of one chief reward of ſuperior prudence, which is, the authority, leading and dependence it would otherwiſe give him. Hiſtory is full of inſtances, which are ſo many clear proofs of this. The Roman hiſtory in particular, in the language of which republic, as an excellent author hath obſerved, the influence of ſuperiority in wiſdom united with benevolence, was called *auctoritas patrum*; and the veneration paid by the people to it was called *verecundia plebis*. There is in every man naturally a deſire of power. It indeed enlarges and becomes ſtronger, in proportion as the mind enlarges and opens. But it is ſo ſtrong, even in the meaneſt, that unleſs they depend, or hang upon others by the teeth, they may be led, but they will not be driven. If nature had not implanted in all men a deſire of power, and a ſtrong ſenſibility to wrong and injury, the veneration which ſuperiority in parts naturally inſpires, would have rendered the generality of mankind, who ſtand in need of leading and direction, too ſubmiſſive, too tame and humble. But notwithſtanding the natural ariſtocracy diffuſed over mankind, yet ſuch is the general temper of mankind, that not only ſuperiority in parts, without benevolence, will not gain reſpect and ſubmiſſion, but even a ſtricter and cloſer dependence will hardly be able to keep men in ſubjection when power over them is abuſed, if it can by any means be ſhaken off. 3. And this leads me to take notice of another kind of dependence among mankind; a dependence neceſſarily reſulting from inequality in property. I need not ſtay to prove that earth, the habitation of men, being given by nature to be poſſeſſed and appropriated by the induſtry of the firſt occupants, the world could no ſooner be tolerably well peopled, but in every diſtrict there would be inequality of property. I need not ſtay to prove how this would naturally happen in conſequence of the manner in which mankind is propagated by ſucceſſive generations, the natural ariſtocracy among mankind, which hath been mentioned, and other cauſes; nor to ſhew what revolutions in property, commerce, not to mention force, will naturally be ever bringing about, where the balance of property is not fixed by civil laws and conſtitutions; far leſs need I ſtay to prove that an over-balance of property will produce power or dominion proportional to it. Theſe things have been ſufficiently explained by the moſt ingenious Harrington. All that it belongs to our preſent purpoſe to obſerve with relation to it, is, that as inferiorities and ſuperiorities, with regard to the good of the body as well as of the mind, are neceſſary to ſocial communication; neceſſary to make mankind mutually dependent, or to lay a foundation for mutual giving and receiving; ſo, with reſpect to external dependencies, or hanging by the teeth, that muſt neceſſarily take place among mankind in conſequence of unequal property, men are furniſhed by nature with all the affections ſuch dependencies require, in order to render them a means of agreeable union and coherence, or to found upon them very various ſocial commerce. For, 1. Men have a principle of benevolence to excite them to take delight in doing good, and in being ſerviceable to one another. And, 2. They have a ſenſibility to oppreſſion and injuſtice, which impels them to ward againſt injury, and reſent it with great vehemence. Wherefore, as without ſome ſort of dependencies there could be no ſuch thing as ſocial commerce; ſo mankind could not be better provided by nature than they are for reaping all the advantages of mutual dependencies, and for ſecuring themſelves againſt all the inconveniencies that can ariſe from mutual dependency. And as reciprocal dependence lays mankind under a neceſſity of ſocial communication; ſo the natural affections with which men are endued, point out to us the manner in which ſocial communication ought to be carried on. For benevolence naturally produces love and gratitude. But no one can be ſo powerful as not to want aſſiſtance in many reſpects; and the indignation againſt injury, and averſion to ſlavery or abſolute ſubjection, natural to mankind, will render power very ineffectual to true happineſs without benevolence. Since that alone can excite love, affection, truſt, or eſteem; and he who knows himſelf to be hated and deſpiſed, muſt be very unhappy amidſt the greateſt affluence of outward enjoyments, as well as very unſecure of long poſſeſſing them. Thus therefore nature hath made the exerciſes of benevolence, good-will, compaſſion, generoſity, gratitude, fidelity, integrity and friendſhip, to be, in every reſpect, the happineſs of mankind, and the happineſs of every individual. And therefore, of the mutual wants and dependencies among mankind, which ſome look upon as an objection againſt the good government of the world, it may juſtly be ſaid,

To theſe we owe true friendſhip, love ſincere,
Each home-felt joy which life inherits here.
Eſſay on man.

But this will yet more clearly appear, when we conſider, 4. The neceſſary dependence of children upon their parents, in conſequence of the manner in which nature hath appointed the propagation of mankind, and the affections which nature hath implanted in men, in order to direct and impel them to the care of their infant-offspring, and to the propagation of mankind in the way neceſſary to the general happineſs of mankind. It is evident, that proper care cannot be taken of infants, as they come into the world in a moſt helpleſs condition, unleſs their parents unite together in concern about bringing them up to a ſtate capable of doing for themſelves. Neither their bodies nor their minds can otherwiſe be taken due care of. Now, in order to excite us to this care, nature hath implanted in us ſeveral ſtrong affections, all centering in it as their end; ſo that a great part of human happineſs, a great part of our moſt agreeable employments, really conſiſts in parental cares, and filial returns to ſuch cares. There is not only a ſtrong mutual ſympathy between the ſexes, founded in, and ſupported by many mutual wants and ties. But mankind have a ſtrong natural inclination to continue themſelves in a new race, which they may look upon as their own; to which a regular union between the ſexes, in ſuch a manner, that love and fidelity may be moſt ſecurely depended upon, is evidently neceſſary. And no ſooner are children born to parents in ſuch a way, that there is no doubt of their being the offspring of faithful embraces, than a warm love ſprings up in their minds towards this progeny, which is conſiderably increaſed by our ſenſe of their abſolute dependence upon our care, and ſoon receives an additional warmth from the gratitude, love and attachment to us, which they very early diſcover, and which become firmer, by becoming more rational, in proportion to the care parents take of what is principal in relation to their childrens happineſs, the formation of their minds. Deſire to be a parent, and the head of a family, is an affection that early ſprouts up in every mind, and hath betimes a great ſhare in all our purſuits. And when the marital and parental ties are once formed, then nature points our views more immediately towards our offspring and family, as the moſt proper object of our care. And this is evidently the manner in which benevolence ſhould operate in order to the general happineſs of mankind. Thus nature makes certain perſons nearer and dearer to one another, and by ſo doing aſcertains or appropriates to every one certain more immediate objects of his concern and affection; and, at the ſame time, inſtead of ſevering or dividing mankind by this means into ſo many ſeparate bodies, with ſeparate intereſts, binds mankind together by ſo many more ties. For every one, who hath a warm attachment to the welfare of many endeared to him by ſpecial bonds and affections, muſt feel a ſtronger obligation, than thoſe who are ſtrangers to ſuch motives, to gain the love of mankind, without which his own power to do good to ſuch would be of very little conſequence, however great it might be with it. There is this remarkable difference between the inſtinct of brutes, that impels them to the care of their offspring, and the natural affections of mankind.

Not man alone, but all that roam the wood,
Or wing the ſky, or roll along the flood;
Each loves itſelf, but not itſelf alone,
Each ſex deſires alike, till two are one;
Nor ends the pleaſure with the fierce embrace,
They love themſelves a third time in their race.
Thus beaſt and bird their common charge attend,
The mothers nurſe it, and the ſires defend;
The young diſmiſs'd to wander earth or air,
There ſtops the inſtinct, and there ends the care.
The link diſſolves, each ſeeks a freſh embrace,
Another love ſucceeds another race.
A longer care man's helpleſs kind demands,
That longer care contracts more laſting bands;
Reflexion, reaſon, ſtill the ties improve,
At once extend the intereſt and the love.
With choice we fix, with ſympathy we burn,
Each virtue in each paſſion takes its turn;
And ſtill new needs, new helps, new habits riſe,
That graft benevolence on charities.

Eſſay on man.

Now nature, by thus ordering the propagation of mankind, and enduing us with correſponding affections as parents and as children, aſſigns to every one a more immediate and particular taſk or care; the faithful diſcharge of which by each in his ſphere, would make human life all peace, love and harmony. Our general benevolence hath thus a particular biaſs, which points it into its proper road, or into its firſt cares and principal employments. Were mankind to be propagated as they are, and we not endued with the affections which are really implanted in us by nature, to how many bad chances, with regard to their education more eſpecially, would mankind be expoſed in their infant-ſtate? And, on the other hand, if we had not thoſe natural affections in us which tend to regular propagation, in order to have certain children, and to due care of our thus certain offspring; would not we want many ſincere pleaſures, many warm, intereſting, delightful cares? Wou'd it not our general benevolence want a ſtrong ſource for nouriſhing and ſupporting it? And would not be left too vague and undetermined by nature? But being conſtituted as we are, our benevolence is properly directed, and properly invigorated; and nature hath given us affections to impel us to what neceſſity obliges us; with affections which makes every one feel immediate ſatisfaction in that regular exertion of benevolence, which the intereſt of all in general requires. Thus, while every man touches us as ſuch, certain particulars ſtrongly call upon our ſpecial attention; and we have each a particular province aſſigned to us by the natural tendency of our affections, the faithful diſcharge of which is contributing a very great ſhare towards the public good. And this determination of our mind to particular exerciſes of benevolence, is ſo far from ſtinting and confining benevolence, or from having a natural tendency to degenerate into a narrow *clanniſh* diſpoſition, that it naturally produces a fellow-feeling with all other parents and their cares, *i. e.* with all mankind; and renders the mind in general much more tender and ſympathizing than it can be without frequently feeling ſuch kindly emotions. For this plain reaſon, that humanity and benevolence, like all other affections, grow ſtronger and ſtronger by exerciſe; or, in other words, repeated exerciſes form a general temper correſpondent to them.

We have now therefore found that nature lays us under the neceſſity of ſocial communication, and impels us to it by ſtrong affections; and lays us under the neceſſity of ſocial communication in a certain order, to which it likewiſe prompts and impels us by very ſtrong affections, giving particular determinations to our benevolence, or aſſigning a nearer, a more immediate province to it. And hitherto certainly we have found our nature to be very well conſtituted, even in that reſpect againſt which the greateſt objections have been made (*viz.* differences or inequalities among mankind): and hitherto alſo we have found the obligations ariſing from our conſtitution, and the connexions of things relative to our happineſs, to be very obvious. They ſtare every one, who conſiders human nature with any attention, ſo to ſpeak, in the face.

Sect. XII.

self

Other affections in the human mind explained.

But we ~~will~~ ſtill perceive another ſecurity in our conſtitution againſt the degeneracy of family attachments into too narrow, confined, and partial benevolence, when we conſider another determination in our nature, excellently adapted to check not only ſelf-love, but partial affection of whatever ſort, whether towards relatives by blood or friends; and admirably adapted to the circumſtances of human life in general; which is the ſympathy and pity diſtreſs immediately excites in the human breaſt, violently intereſting us in the miſeries of others. An embodied ſtate muſt neceſſarily be liable to various calamities, in conſequence of the very laws of matter and motion, which make the beſt, the moſt orderly,

Sympathy.

derly, convenient and beautiful ſyſtem, as our mundan ſyſtem is well known to natural philoſophers to be. And nature hath, by wiſe and kind care, implanted in the human heart a principle of compaſſion, which is admirably well adjuſted to ſuch a condition. For by this we are impelled to ſympathize with the afflicted, and to run without delay to their relief. And how much doth even ſympathy itſelf alleviate pain and ſuffering! Such is the nature of compaſſion, that it conſiders or attends to no more but diſtreſs, is immediately excited, and directly puſhes to give the relief which the calamity calls for, without counting kindred, or ſo much as aſking who the ſufferer is; and gives indeed no ſmall pain, when help is not in our power. Now, ſurely nature could not have more clearly pointed out to us the order in which our benevolence ought to work, than by determining it to receive ſuch an impreſſion, ſuch a tendency from diſtreſs. It is true, this affection may be too ſtrong to anſwer its end, as it plainly is, when it quite overpowers and enfeebles one. And by pains taken to harden the heart, it may, on the other hand, become very weak, nay, be almoſt quite erazed out of the mind. But have we not reaſon to guide all our affections to their proper end, obedience to which is, as hath been obſerved, our firſt duty or obligation by the laws of our nature? And what can be more evident to a conſidering perſon, than that the end of this paſſion is to knit mankind together, and to give them a fellow-feeling with one another, that they might thus be kept from injuring one another, and be prompted to aſſiſt one another in the calamities and diſtreſſes to which all men in common are obnoxious? Or who will ſay, that tho' there be a mixture of pain in this affection, yet it is not, notwithſtanding, ſo agreeable an emotion of the mind, that the pleaſures ariſing from the exerciſes of it, make a counterbalance to the bodily evils reſulting

Compaſsion.

from the neceſſity of nature ſufficient to vindicate providence, when we reflect at the ſame time upon the many other goods ariſing from the ſame excellent laws which make theſe evils neceſſary? That the exerciſe of compaſſion is a high ſatisfaction, the tragic art, the principal charm of which lies in violently moving and agitating our pity, is a ſufficient proof. And indeed, by the conſent of all mankind, a breaſt quite devoid of compaſſion, is pronounced inhuman; *i. e.* unfit for human life; a ſtranger to the beſt feelings, the moſt agreeable and becoming emotions of the human heart. The reaſon is, becauſe ſuch are in fact found to be equally ſtrangers to natural affections, to friendſhip, to a ſenſe of honour, and conſequently to all the richeſt ſources of human delight; the richeſt ſources of human delight for theſe affections being removed, what remains but the palate, and a few other organs of ſenſe, in the whole liſt of human means or capacities of gratification? But wherever compaſſion prevails, there nature hath given a particular determination to our benevolence, the uſe of which to mankind in general is very evident; there nature hath made a connexion with regard to public and private happineſs that merits our attention; there nature hath given a ſenſe, a capacity of pleaſure, that deſerves our care and keeping: it cannot be impaired or corrupted, without ſadly diminiſhing the proviſion nature hath made for our enjoyment, for the happineſs of every individual, as well as the common happineſs of our kind. Every road that nature hath made to true happineſs, is a law of nature to us. And therefore, if natural affections belong to us, or if compaſſion belongs to us, they are, in this ſenſe, laws of nature to man, that they indicate to us a certain courſe of affection and action, which nature hath made to be one conſiderable ſource of enjoyment to us. For can happineſs be found but where nature hath placed it?

Can we change and alter the natures of things at our pleaſure, and make any thing painful or agreeable as we will? If we cannot, we muſt take nature's paths, and ſeek happineſs where nature has laid it. But nature hath placed it in induſtry, benevolence, natural affection, compaſſion, and the preſidence of reaſon. Theſe are the chief ſources from which we muſt draw it. We can no more alter theſe connexions than we can change the laws of motion and gravity. They are therefore laws to us in the ſame ſenſe, that the laws of motion are laws to human arts for the attainment of their ends.

Other affections adapted to our dependencies and neceſſities explained.

But the human mind is a very complicated ſtructure: It is compoſed not of one, but many principles of action, all of which are ſources of very conſiderable enjoyment, and at the ſame time mutual checks or poiſes one to another, in order to point and lead us into, and keep us in the courſe of behaviour, which is at once the intereſt of every individual, and of the whole ſpecies. Several ſuch have been already mentioned, and there are yet two others, the uſe of which in our frame well deſerve our attention. 1. The firſt is a principle of reſentment. By this we mean not merely ſudden anger, which is nothing elſe but the neceſſary operation of ſelf-defence, or ſenſibility to danger and hurt, and hath hurt as ſuch for its object; for this is common to man with all ſenſible creatures: But we underſtand that indignation which injury or wrong, as ſuch, neceſſarily excites in our mind, which ſuppoſes a ſenſe of injuſtice or injury, and can only take place in minds capable of diſtinguiſhing equity and iniquity. In this do theſe two principles, which are often confounded together, in treating of the human affections, differ, that one hath ſuffering for its object and motive cauſe, the other that ſuffering only which is apprehended to be injurious. It is oppoſition, ſudden hurt, violence, which naturally ex-

Resentment.

excites ſudden or momentary anger; reflexion on the real demerit or fault of him who offers that violence, or is the cauſe of that oppoſition or hurt, is not neceſſary to occaſion this mere ſenſation or feeling. It is mere inſtinct, as merely ſo, as the diſpoſition to ſhut our eyes upon the apprehenſion of ſomething falling into them, and no more neceſſarily implies any degree of reaſon. For it works in infants, in the lower ſpecies of animals, and (not ſeldom) in men towards them, in none of which inſtances this paſſion can be imagined to be the effect of reaſon, or any thing but mere inſtinct or ſenſation. And no doubt the reaſon and end for which man was made thus liable to this paſſion, was to qualify and arm him to prevent (or perhaps chiefly) to reſiſt and defeat ſudden violence, conſidered merely as ſuch, and without regard to the fault of him who is the author of it.

But reſentment, which on account of what it hath in common with ſudden anger, may be called deliberate anger, is not naturally excited by mere harm, but in order to move it, harm muſt be apprehended as injurious or wrong. " This is ſo much (ſays an excellent author) underſtood by mankind, that a perſon would be reckoned quite diſtracted, who ſhould coolely reſent an harm, which had not to himſelf the appearance of injury or wrong." Now that the reaſon and end for which this principle is implanted in us by nature, is to fill us with indignation againſt injury, and to excite us to reſiſt, defeat and puniſh it, is evident; for this is the end to which it naturally tends. And therefore, with regard to it, it is plain, that it is in its nature a ſocial affection: it is a fellow-feeling which each individual hath in behalf of the whole ſpecies. For tho' injury to ourſelves muſt affect us more intimately than injury done to others, in conſequence of the nearer ſenſibility to one's ſelf, which is inſeparable from the conſtitution of every ſenſible being; yet we find that the way in which injuries to others affect us, is exactly the ſame in kind. To be convinced of this, we need only attend to the manner in which a feigned ſtory of baſeneſs and villainy works up this paſſion in us. And ſuch being the nature of this paſſion, it is far from being any defect or fault in our conſtitution, or from being in the leaſt degree a-kin to malice: It is, on the contrary, ſo connected with a ſenſe of moral good and evil, or of virtue and vice, that it could not take place without it; and may be properly ſaid to be reſentment or indignation againſt vice and wickedneſs. Far leſs ſtill can this affection in our conſtitution be reckoned of a pernicious tendency, when we conſider it as united in our frame with the other affections we have already mentioned, as compaſſion in particular; for as it is counter-balanced by them, and intended to co-operate with them, it can be deſigned for no other end but to make the reſiſtance and oppoſition to vice which vice demerits, and not to give pain for the ſake of tormenting others. For our compaſſion being moved by the ſuffering of another as ſuch, and our reſentment being only excited by wrong as ſuch, we are thus by nature equally furniſhed for repelling injuries, and for commiſerating innocent ſufferers. Reaſon hath thus, as it were, two handles to guide us by, whether in repelling injuries, or in pitying ſufferers, by each of which the other is kept within due bounds. Compaſſion is of uſe to moderate reſentment, and reſentment to hinder compaſſion from miſplacing its tenderneſs upon the undeſerving and vicious, to the prejudice of innocence and merit. So ſocial then is our frame, that there is no paſſion in our nature which delights immediately in miſery as ſuch. But, on the contrary, miſery always excites compaſſion, unleſs when it is apprehended as the juſt deſert of injury. And ſo far is reſentment generally from being too ſtrong in human nature, that however eagerly it may deſire and purſue

ſue the puniſhment of injuſtice, yet the puniſhment, which is the end of the paſſion, is no ſooner gained, than commonly it gives way to compaſſion to ſuch a degree, that it requires keeping the injuſtice of the ſufferer very fully and ſtrongly in our view, not to ſuccumb entirely to pity. 2. But I have chiefly mentioned this principle in our nature here, as it, together with what I am now to take notice of, *viz.* Love of Fame, the love of fame and power, renders mankind capable of ſeveral great actions. For if we examine narrowly into what it is that impels the human mind to dangerous and bold atchievements, and gives heroic ſpirits ſuch high delight in purſuits ſeemingly ſo oppoſite to ſelf-love, we will find that theſe are the ſources in our nature, from whence the delight in them, and the motives to them principally flow; I ſay, principally flow, becauſe no doubt a moral Senſe moral ſenſe of beauty in actions (of which afterwards) hath no ſmall ſhare in true heroiſm; and religious Prin=ciple. religious principles, as they are of a very proper nature to promote true fortitude, patience and courage, ſo they have often produced the greateſt actions, the braveſt heroes.

Whence the hazardous enterprizes with which the hiſtory of all ages and countries is filled, that ſtrike us with ſuch admiration and amazement? To what do hiſtorians aſcribe them? And to what ſource does every reader chiefly refer them in his own mind? Is it not to the love of power or empire, and the love of fame? Now ſurely, if theſe be the main incentives to atchievements, in which life and all its advantages are ſo boldly riſked; we may juſtly conclude, that the love of power and fame may arrive to a very great pitch of vigour and force in the human mind. And ſuch indeed are the circumſtances of ſeveral moſt renowned actions in hiſtory, that ſo much of the motives to them muſt needs be aſcribed to theſe ſources, as makes it very proper in an analyſis of the human affections, to give particular attention to the love of fame and power, and the ends for which they are implanted in us by nature. Now, into whatever extravagancies the love of fame and power may run; (as what paſſion in our nature may not be perverted, and ſo degenerate into ſomething very wild, fooliſh and hurtful) yet they are implanted in us for very uſeful purpoſes. Let us conſider the two ſeparately. 1. The love of fame. Is it not a paſſion that takes its riſe from ſociability, and that ſtrongly cements us to the intereſts of our kind? For what is it at bottom but regard to the eſteem and love of mankind? Can we love mankind without deſiring to be reſpected, eſteemed and honoured by them? or can we like actions which tend to gain us the love of mankind, without liking the love they tend to gain? Love of fame is inſeparable from ſociality; and true honour conſiſting in the merited real eſteem of mankind, is a noble aim; not a mean or mercenary view, but a truly generous and laudable motive. Nay, ſo nearly allied is this praiſe-worthy ambition to virtue, that he who deſpiſes fame will ſoon forſake the paths which lead to it. And therefore Cicero juſtly ſays, *Vult plane virtus honorem nec eſt virtutis alia merces.* 2. As for the love of power. It is abſolutely neceſſary to beings made for progreſs in perfection, and to extend and enlarge their faculties. For what elſe is it at bottom, but deſire to expand and enlarge ourſelves, to dilate and widen our ſphere of activity? Without this impulſe, without being made to receive high delight from the conſciouſneſs of our growing and advancing in perfection, in knowledge, in authority, in power to ſerve others, and promote their intereſts, how liſtleſs and inactive would our minds be? And how liſtleſs indeed, ſluggiſh and inactive are the minds, where the love of encreaſing all their powers, the deſire of being as independent of others, and as ſufficient to themſelves as they can be, does not prevail in ſome degree! 3. And in a life ſubject to evils of various ſorts, to many natural calamities, and many greater moral ones, ariſing from the perverted, corrupt affections of men, how neceſſary are both theſe principles to fortify our minds with patience and courage, and to qualify us to oppoſe and defeat theſe evils? Where theſe paſſions do not obtain in a great degree, how eaſy a conqueſt are a people to every proud uſurper or tyrant; how tamely and ſubmiſſively do they yield their necks to the yoke of arbitrary power? But as uſeful as theſe noble principles are in our nature, and as great a ſhare as they have in the great actions which chiefly render the hiſtory of human life capable of attracting or detaining our attention, yet all muſt not be aſcribed to them. For that juſt reſentment againſt injury, juſt indignation againſt oppreſſion, tyranny and deſpotic inſolence, often kindle the heroe's breaſt with a generous ardour to deſtroy and root out theſe enemies of mankind, and make him ruſh intrepidly into the thickeſt dangers to reſcue his fellow-creatures, his country, from ſlavery and miſery;— that this paſſion is often the patriot's chief motive in his moſt perilous and brave enterprizes, almoſt the only thing he hath in his view to animate and invigorate him, might be proved by many ſhining inſtances from hiſtory. But all that it belongs to our preſent purpoſe to obſerve is, that none of theſe paſſions are inconſiſtent with a ſocial principle, but on the contrary take their riſe from it: it is the only root from which they can ſpring: Nor are theſe affections weakened or perverted by any other means than thoſe which equally weaken or pervert every other generous or great affection in our minds. Thus, the ſame long ſubjection to arbitrary power, which almoſt quite effaces all ideas of liberty, all greatneſs, boldneſs and freedom of mind, is it not likewiſe obſerved to render them, who have been long inured to it, ſluggiſh, indolent, ungenerous, revengeful, and rather nearer to the temper of monkeys or buffoons in all reſpects, than to the ſpirit and temper of men? However theſe principles or diſpoſitions may be corrupted, they are to us, as they naturally ſtand in our frame, ſources of very noble pleaſures, and motives to very great and laudable activity. We cannot ſuppoſe them removed out of our conſtitution, without reducing mankind to a very low and contemptible creature, in compariſon of what it is the natural tendency of theſe affections to render us, as they are united in our frame with benevolence, compaſſion, and natural affections to our parents and offspring. They cannot be taken from us, without cutting off from mankind all capacity of the greater purſuits that now adorn and bleſs human life. Nor can they indeed be objected againſt in our frame, when they are thus conſidered. And when the Author of nature is blamed by any philoſopher for having implanted them in our frame, they are repreſented by ſuch as making the only principles of action in our minds; and are thus disjoined from other principles in us, with which they are naturally united, and conſequently intended by nature to co-operate. But certainly, in order to judge of a conſtitution, we muſt conſider all its parts as they mutually reſpect one another, and by theſe mutual reſpects make a whole. Thus we judge of all other conſtitutions or ſtructures, natural or artificial. And thus likewiſe ought we to judge of the fabric of the human mind.

Sect. XIII.

Recapitulation.

Now, having thus analized the human mind into the chief principles, diſpoſitions or affections of which it is compounded; what follows, but that, this mind ſo conſtituted is a law to itſelf; or that it, and the connexions relative to it, which have likewiſe been explained as we proceeded in this reſolution of the human mind into its component parts, make to man the laws and rules of his actions?

tions? Thus laws of conduct are conſtituted to man for the government of his affections, in order to the attainment of happineſs in the ſame manner that the laws of matter and motion conſtitute rules to human arts for the attainment of their ends. In the ſame ſenſe that it is neceſſary for man to act conſonantly to the properties of air and water, in order to gain certain purpoſes, ſuch as raiſing water, *&c.* in the ſame ſenſe are the connexions relative to our affections, laws or rules to us, how to regulate and direct them, in order to avoid certain evils and to obtain certain goods. We have not in this enquiry meddled with a queſtion, the manner of handling which hath greatly perplexed the ſcience of morality, *viz.* the freedom of human will: For this evident reaſon, that it neither more nor leſs concerns morals, than it does an enquiry into the connexions of nature, whence the rules in mechanical arts muſt be deduced. This is manifeſt. Becauſe, if man be not at all maſter of his actions, it muſt be as much in vain to direct him how to act in any one way, as how to direct him in any other. Directions and counſels, or exhortations, can only be of uſe with reſpect to things in human power. But if directions, counſels, or exhortations, with regard to induſtry in cultivating mechanical arts for the benefit or ornament of human life, can be of any uſe to man, then muſt man be acknowledged to be maſter of almoſt all the powers, faculties and affections to which any other counſels, directions or exhortations can be addreſſed. For then muſt he be maſter of getting knowledge, if he will; maſter of applying himſelf to ſtudy and labour; he muſt be capable of being moved by repreſentations of what the intereſts of ſociety require, and of making that the end of his purſuits; maſter of deſpiſing toil and hardſhips in that view; and maſter of aiming at fame and honour, by doing ſome laudable ſervice to mankind in that way. But if he be ſo far maſter of his affections

Why we do not here enter into the diſpute about liberty and neceſſity.

fections and actions, which affections and actions is he not maſter of in the ſame ſenſe? Indeed all the grave ſophiſtry about liberty and neceſſity, with which moral enquiries have been ſo ſadly embarraſſed, to the great obſtruction of true and uſeful knowledge, might as well be prefixed to a ſyſtem of phyſics as of morals. For if they prove any thing at all, they prove that mankind ought to fold their arms, and let things go as they will. If they prove, or are deſigned to prove this, are not rules about ſowing in ſeed-time in order to reap in harveſt, rules about building ſhips, or any other machines, as idle as rules about the government of the affections? And if they are not deſigned to prove this, what are they intended for? For till this is proved to be a neceſſary conſequence of God's foreknowledge, or of our being influenced by motives, or of whatever other truth from which neceſſity is thought to follow,—till this be proved, what is called *neceſſity*, cannot be contrary to what is called *liberty*, *viz.* our having certain things in our power, or our being the diſpoſers or maſters of our actions. In fine, whatever proves any thing repugnant to our liberty, muſt prove that we are not at all maſters of doing, or not doing as we will in any caſe; that we have no power, no dominion, no ſphere of activity; or, in one word, that we are not agents: and this being proved, mechanical arts, which are rules to certain actions, or rules for our attaining certain ends, are juſt as much affected by it, as the ſcience of morals, which is a ſyſtem of rules to certain other actions, or for our attaining certain other ends. The arguments brought againſt human liberty, were never ſaid only to prove that neceſſity extends merely a certain length, and no further. Nor can it be ſaid; for if they prove any thing at all, they muſt prove univerſal neceſſity. And if they do indeed prove univerſal neceſſity, then human action in every ſenſe is abſurd, and conſequently all rules to human actions of any ſort or kind are equally abſurd; or by the univerſal neceſſity they are ſaid to prove, and brought to prove, is meant a neceſſity with which human agency is very conſiſtent; which will be to ſay, that they are brought to prove, and do prove that we are not agents in a ſenſe that is however very compatible with our being agents. Surely the controverſy about liberty and neceſſity muſt be of very little moment, nay, a very idle, impertinent logomachy, if any aſſerters of neceſſity think that the neceſſity they plead for is abſolutely conſiſtent with our being maſters of our actions, our having a ſphere of power which we are capable of uſing well or abuſing, as we pleaſe. For never was liberty underſtood to mean more than dominion and power, and accountableneſs, in conſequence of our being diſpoſers of our actions. And ſo in this caſe their neceſſity is our liberty. But if they really mean an univerſal neceſſity, abſolutely repugnant to our agency, *i. e.* to our having the diſpoſal of our actions, which renders rules and directions about actions abſurd, as proceeding upon a falſe ſuppoſition; then are thoſe, who treat of gaining certain natural ends by certain actions adjuſted to natural connexions, as much concerned in the controverſy as moraliſts, when they treat of attaining certain other ends by actions adjuſted to other natural connexions. And for this reaſon, we may diſmiſs it as a queſtion which does not particularly concern our ſubject; but every ſubject equally, which ſuppoſes man to be an agent.

The concluſion from the whole preceding reaſoning.

And therefore, to go on with our concluſion, we ſay, that the connexions which we have found to be fixed by nature, relative to our happineſs, are laws of nature to our conduct in the ſame ſenſe that the connexions in nature, relative to certain phyſical ends, are laws with regard to certain phyſical arts. They are laws we cannot alter, but to which we muſt conform, in order to attain our greateſt happineſs, our beſt enjoyments, or greateſt goods. And they are laws appointed by the Author of nature to our conduct. For all eſtabliſhed connexions in nature muſt mean connexions appointed and upheld, or ſubſiſting by virtue of the will of the Author of nature, who gave being to all things, and to all orders and connexions of things (§ 3). Now, all this being true, it follows, that man is in the ſame ſenſe made for prudence and ſelf-government; for induſtry; for acting with reaſon, and agreeably to its dictates; for benevolence, or the purſuit of public good; for paternal cares and filial gratitude; for indignation againſt injury and oppreſſion, and for compaſſion towards our ſuffering or diſtreſſed fellow-creatures; it follows, I ſay, that we are made for theſe ends in the ſame ſenſe that the eye is made to ſee, the ear to hear, that a certain ſtructure is made for flying, and another for ſwiming and living in water, or that bodies are made to gravitate in proportion to their quantities of matter, or are to be conſidered as having that property in human arts. The Author of nature, who hath made the one kind of connexions, hath likewiſe made and fixed the other. And if the preceding account of human nature, or of our internal principles and diſpoſitions, and the connexions relative to them be true, to ſay man is not made for the exerciſes abovementioned, to which we may now certainly give the name of virtues, without taking any thing in morals for granted, is to ſay, a being endued with a governing principle, by which it is intended he ſhould govern himſelf, is not intended to be ſo governed; which is to aſſert, that a governing principle is not, in its nature and end, a governing principle: it is to ſay, a being endued with a governing principle, the uſe and end of which is to give him ſelf-command, or the maſterſhip of his affections, is not made to be maſter of his affections by his governing principle; which is to aſſert, that he hath a principle which hath an end and uſe which it hath not: It is to ſay, that a being who hath ſocial affections, and a principle of benevolence, determined, or adapted to receive different kindly impreſſions from different objects, is not intended to have theſe ſocial, affectionate, generous impreſſions, nor to exerciſe theſe affections; but has them for no end at all, or for a quite oppoſite and contrary end. In fine, let any man conſider theſe virtues, and compare them with the make of the human mind, and all our internal principles and diſpoſitions, and then ſay that man is made for imprudence, folly, wilfulneſs, and precipitancy; to be toſſed to and fro by tumultuous contradictory affections, without any order or government; and to be cruel, tyrannical, abuſive, oppreſſive, uncompaſſionate, quite unſocial. Let him ſay what reaſon he can give for affirming that the eye is made to enjoy the light, the ear to receive pleaſure from muſic; or, in one word, what reaſon he can give for ſaying any thing natural or artificial is made for an end, that will not equally oblige him to ſay, man is framed, made and intended for rational government of his affections, for benevolence, and the other virtues which have been named. If he ſays, whatever affections men may have, man is made to purſue his pleaſure, let him ſhew how men can have pleaſure but from the gratifications of particular affections; and let him ſhew that the affections we have named are not belonging to human nature, or that they are not belonging to it as ſources of pleaſure and enjoyment. In fine, let him ſhew what other enjoyments human nature is provided for which are ſuperior to the preſidence of reaſon, affections diſciplined by reaſon, and exerting themſelves in the order of benevolence that hath been deſcribed. We reaſon from fact or experiment; and what we have maintained, can only be refuted by ſhewing our analyſis of the human mind not to be fact. For if the reſolution of the human mind that hath been given be juſt, our concluſion ſtands upon the ſame bottom with all the reaſonings in natural philoſophy concerning the ſtructures, properties, laws, and final cauſes of things. The only thing that can be objected againſt this deduction of the ends for which men are made and intended, is, that men are in fact very irregular; that the affections of mankind are generally very tumultuous and undiſciplined, and there is much malignity, ill-humour, envy and hatred amongſt them; and that the love of power and fame do not generally lead men to benevolent, but rather to miſchievous actions. But let mankind be repreſented as villainous as they have ever been ſaid to be, by any philoſopher or politician; or, if you will, more black and deformed than any hath ever yet called them, it will not ſhake or weaken our reaſoning. For though that be not true, but, on the contrary, a very falſe charge, yet we can ſufficiently account for the vileſt corruptions that ever have, or ever can take place among mankind, very conſiſtently with the preceding analyſis of human nature, and the deduction of our duties; *i. e.* our natural ends, from that analyſis. 1. Firſt of all, there is no other conceivable way of furniſhing or qualifying any agent for purſuing the virtues above-named, but by giving them the affections above deſcribed, and reaſon to conduct them. There is no way of qualifying one for doing all under the direction of reaſon, but by giving him faculties to be guided by reaſon, and reaſon to guide them. There is no other way of qualifying one for benevolence, but by giving him a benevolent diſpoſition, and ſo diſpoſing him, as that he may feel great pleaſure in its exerciſes. Let the objectors againſt human nature point out what elſe could be done. Let them name what is wanting to make us rational and benevolent in our behaviour, that nature hath not done for us. If

Objection why there is ſo little virtue, ſo much vice among mankind.

they ſay reaſon is too weak in human nature, or does not grow up faſt enough to do us great ſervice as a guide, this leads to the ſecond thing to be conſidered on this head. 2. Which is, that reaſon muſt grow and improve by culture. It can only become ſtrong by exerciſe and improvement. It can only become ſo powerful as to be habitually our fixed and ſettled guide and ruler, by repeated acts. For thus alone can any habits be wrought in us; thus alone can any affections, diſpoſitions, principles, or powers and faculties of action in us become habits; *i. e.* become ſtrong and prevalent. Repeated exerciſe is the ſole way of acquiring habits. It is therefore the ſole way of perfecting reaſon, or any faculty or principle in our conſtitution; and what other way can we conceive, by which it is better to attain to perfection of any kind than by induſtry, diligence, and repeated acts? But if this be a neceſſary or fit law of our nature, in order to our attainment to perfection, that habits ſhould be formed by repeated exerciſe, and only be ſo formed; muſt not the effect of this be, that bad and hurtful habits will be contracted by repeated bad exerciſes, and that falſe or wrong aſſociations of ideas will be very powerful, very difficult to be disjoined or undone? Muſt not the effect of it be, that if bad habits are ſuffered to grow up to a great degree of ſtrength in our minds by bad education, or through careleſneſs about our education, and reaſon is not early accuſtomed to rule and govern in young minds, that rational dominion over the affections will be very difficultly acquired; the ſenſitive appetites will be exceeding riotous; and every paſſion that has been often called forth, or incited to indulge itſelf by tempting ſhews of pleaſure, will become imperious, headſtrong, and unruly? For it muſt be remembered, that we are not merely intellectual beings, but that we have ſenſes and corporeal appetites, which will neceſſarily become, in conſequence of the law of habits, too ſtrong for reaſon and benevolence to govern, if they are not early accuſtomed to the government and diſcipline of reaſon. And it muſt likewiſe be remembered, that our opinions of goods muſt regulate our affections; and therefore, if falſe ideas have been imbibed early, and have long paſſed unexamined, uncontroverted in the mind, theſe wrong aſſociations of ideas, and falſe judgments of things, will be very hard to overcome; it will be extremely difficult to eradicate or correct them. But what is all this, but, in one word, a long habit of acting without reaſon, or of deſpiſing reaſon, inſtead of inuring our ideas, fancies, opinions, and appetites, to receive their direction from our reaſon, and to act under its preſidence and government. And therefore, in ſpeaking of our being made to conſult reaſon, and act under its conduct and guidance, we took notice of the neceſſity of right education, in order to eſtabliſh reaſon early into our governing principle (§ 8). But having elſewhere * diſcourſed at great length of the power of habits, and the way in which they are formed, and of the chief ſources of corrupt affections amongſt mankind, it is ſufficient to take notice here in general, that there are almoſt no vices among mankind which could take place amongſt them, were we not endued by nature with the beſt affections; affections neceſſary to make us ſocial, benevolent, great and good. They are corruptions or miſguidances of them. Every hurtful affection is a very good one perverted. Accordingly Mr. Locke hath ſhewn us in his excellent *treatiſe on education*, how eaſily all the vices may be early engendered, nay, brought to a very great height of obſtinacy by bad example and wrong methods of education; but he hath, at the ſame time, ſhewn us how all the vir-

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* Principles of moral philoſophy.

tues may be yet more eaſily formed in tender minds. And indeed there is no character in human life however enormous, that ſhews any affection naturally belonging to us, which is not of the greateſt uſe, however hurtful its wrong turns, degeneracies, perverſions or corruptions may be. Nor is there any other cauſe of degeneracy and corruption but bad habit, or not accuſtoming ourſelves to exert our reaſon, and to act under its direction; which, how nature could have better furniſhed us for doing, than by giving us reaſon capable of high improvements; or have better impelled us to do, than by making us to ſee from examples, and feel from our own experience, as it does, the diſmal effects of not acting rationally, the ſad conſequences of not conſulting, or not obeying our reaſon, and of raſhly giving way to every paſſion or appetite that circumſtances may tempt into hurtful indulgences to ſpecious ſemblance of pleaſure, is inconceivable.

Nature well known, no miracles remain,
Comets are regular, and Clodio *plain.*
Pope's Ethic. Ep. to Lord Cobham.

For howſoever odd, whimſical, or fooliſh the ruling paſſion in any heart may be, it is ſome paſſion neceſſary to excellent enjoyments and gratifications, that is become ſo odd, fantaſtical, or unreaſonable. If it is any ſenſual appetite that is the ruler, and triumphs over all other affections of whatever kind, intellectual or ſocial, will it follow from hence, that we ought not to have had ſenſes, or to have been capable of ſenſitive pleaſure? If it is the luſt of power that has got the aſcendant over benevolence in any one, to ſuch a degree, that it is become his maxim; *Si violandum eſt jus, regnandi gratia violandum eſt; aliis rebus pietatem colas.*

If ever we break the ties of right,
'Tis when a kingdom is the glorious prize:
In other things be ſtrictly juſt.

Which is almoſt as great a height of villainy as it can arrive at. Yet ought the deſire of power to have had no place in our frame, or is it of no uſe in it? Or finally, becauſe the deſire of getting riches to ſupport a vain and extravagant way of living, if not ſeverely checked, gradually corrupts the honeſteſt minds, and at laſt engages them in purſuits, which ſome time before they could not think of without abhorrence; are for this reaſon all deſire of property and power, of pre-eminence and honour, or even of elegance and grandeur, paſſions, abſolutely condemnable in themſelves, and to which human nature ought to have been an utter ſtranger? What we learn from *Saluſt*, *Sueton*, and other Authors, is by no means improbable, *viz.* That *Julius Cæſar* had never attempted to deſtroy the liberties of his country, had he been able to have paid the debts which he had contracted by his exceſſive prodigality; and that abundance of people ſided either with him or *Pompey*, only becauſe they wanted wherewithal to ſupply their luxury, and were in hopes of getting by the civil wars, enough to ſupport and maintain their former pride and greatneſs. But does it follow from hence, that all taſte of elegance, all deſire of glory, all love of power and wealth, are abſolutely pernicious, and that they ought to have no place in our frame, or that we ought to have been made totally incapable of forming any ideas or affections that could ever degenerate into ſuch perverſe opinions and luſts? How much more juſt and truly philoſophical is this reaſoning in our excellent poet concerning human paſſions.

Envy, to which th' ignoble mind's a ſlave,
Is emulation in the learned and brave:
Luſt, thro' ſome certain ſtrainers well refin'd,
Is gentle love, and charms all womankind.
Nor virtue, male and female can we name,
But what will grow on pride, or grow on ſhame.

Thus nature gives us (let it check our pride)
The virtue neareſt to our vice ally'd;
Reaſon, the biaſs turns to good from ill,
And Nero *reigns a* Titus, *if he will.*
The fiery ſoul abhorr'd in Catàline,
In Decius *charms, in* Curtius *is divine.*
The ſame ambition can deſtroy, or ſave,
And makes a patriot, as it makes a knave.
Eſſay on Man.

Nature, in order to make a neceſſary diverſity of tempers among mankind, muſt either have made ſome particular affection originally ſtronger in one breaſt, and another in another; or have ſo ordered the ſituations of mankind, that the ſame original affections ſhould of neceſſity take various turns in conſequence of different circumſtances calling forth more frequently, ſome one and ſome another affection, equally natural to all men. But what follows from hence, but that there is a vice, or a hurtful turn, into which every affection is in peculiar danger of degenerating, as is well known to poets, who deſcribe characters, and place them in various circumſtances of actions? Sure it does not follow that any of the affections implanted in the human mind by nature, ought to be wanting. Take them away, and the vices or diſeaſes to which they are incident, will likewiſe be removed: But ſo will the perfections or virtues to which they may riſe and be improved by due culture, likewiſe be ſent a packing. And to what a low ſize will men be thus reduced? Tho' it be reaſon that forms the virtues, yet our affections are the principles or materials that are formed into virtues by reaſon. Reaſon would indeed have nothing to guide, nothing to work upon, if we were not endued with all the affections, from the miſguidances of which the moſt hurtful diſturbances of human life proceed.

Now what is the reſult of this, but that man is excellently furniſhed by nature for attaining, by the due diſcipline of the affections implanted in him, to prudence, to ſelf-command, to benevolence, to fortitude, and to all that is called virtue; and that this is the end for which he is ſo made and framed, in the ſame ſenſe that any thing is ſaid to be made for the end to which its frame and conſtitution is well adapted; that this is his happineſs, his perfection, the ultimate ſcope and deſign of his frame and all the laws relative to it, in any ſenſe of end, ſcope or deſign.

Man is made for virtue and virtuous happineſs.

Sect. XIV.

'Tis true, we are not merely intellectual beings; we have ſenſes and ſenſitive appetites, as well as moral capacities and ſocial affections (§ 6): But it hath appeared, that we are made to govern all our appetites and affections by our reaſon; that our ſenſitive appetites ought to be under its command, and not to be allowed to obſcure it, far leſs to triumph over it, and trample it under foot; and that our ſenſitive appetites are ſo far from engroſſing or making the whole of our conſtitution, that we have other affections, the regular exerciſes of which, under the preſidence and direction of reaſon, are our higheſt and nobleſt enjoyments. This hath been fully proved. And therefore, let it be now obſerved, that kind nature hath not only placed our happineſs in the virtuous exerciſes which have been deſcribed, but hath ſo conſtituted and framed us, that the ideas of the preſidence of reaſon, and of benevolence, can no ſooner be preſented to our minds than we muſt neceſſarily aſſent to and approve thoſe two general rules of life, "That reaſon ought to hold the reins of government in our minds." And, "That benevolence, or regard to public good, ought to be the reigning affection in them." None can reflect upon theſe two rules without per-

Another proof of this, from the moral ſenſe natural to us.

ceiving their fitneſs, and that immediately without making any calculations about their conſequences. And therefore we may juſtly ſay with an excellent author (Domat in his *treatiſe of laws*) "That the firſt principles of morality or laws, have a character of truth, which touches and perſuades more than that of the principles of other human ſciences; that whereas the principles of other ſciences, and the particular truths which depend upon them, are only the objects of the mind, and not of the heart, and that they do not even enter into the minds of all perſons; the firſt principles of morals or laws, and the particular rules eſſential to theſe principles, have a character of truth which every body is capable of knowing, and which affects the mind and the heart alike. The whole man is penetrated by them, and more ſtrongly convinced of them, than of the truths of all the other human ſciences." Or with another admirable moraliſt (Hutcheſon in his *Enquiry*, *&c.*) "The Author of nature has much better furniſhed us for virtuous conduct, than many philoſophers ſeem to imagine, or at leaſt are willing to grant, by almoſt as quick and powerful inſtructions as we have for the preſervation of our bodies. He has given us ſtrong affections to be the ſprings of each virtuous action, and made virtue a lovely form, that we might eaſily diſtinguiſh it from its contrary, and be made happy by the purſuit of it. As the Author of nature has determined us to receive by our outward ſenſes, pleaſant or diſagreeable ideas of objects, according as they are uſeful or hurtful to our bodies, and to receive from uniform objects the pleaſures of beauty and harmony, to excite us to the purſuit of knowledge, and to reward us for it; in the ſame manner, he has given us a moral ſenſe to direct our actions, and to give us ſtill nobler pleaſures; ſo that while we are only intending the good of others, we undeſignedly promote our own greateſt private good." But having elſewhere

Of our moral ſenſe.

handled this ſubject at great length, it will be ſufficient to remark here, 1. That in conſequence of the ſenſe of beauty in outward forms, and of the ſenſe of beauty in affections, actions and characters, with which the human mind is endued, all the pleaſures which man is intended by nature to purſue, may properly be comprized under the general notion of order or beauty: For they have all this general or common character, that they proceed from well diſciplined and regulated affections, and they all tend to produce order within and without the mind. What is the preſidence of reaſon, but reaſon maintaining order and harmony; and what do the regular exerciſes of benevolence which have been deſcribed produce, but inward and outward harmony? What makes the pleaſure of contemplation and knowledge, beſides the views of regularity, order and harmony? What is it that charms the imagination in any of the imitative arts? Or what hath what is called *good taſte* for its object and ſcope, beſides order and harmony in compoſition? And how groſs and contemptible are all the pleaſures of ſenſe, when we abſtract from them all elegance, all ſymmetry, proportion and order? Man therefore, may in general be ſaid to be framed by nature to purſue order and harmony. And this is indeed the purſuit of the Author of nature himſelf, univerſal order and harmony, or, which is the ſame, univerſal good. But,

By this moral ſenſe we are led to conceive the virtues above deſcribed as commanded by God the Author of nature.

2. As the preſidence of reaſon over all our appetites and affections, and the prevalence of benevolence in our temper, cannot be conſidered by us without being perceived, or rather felt to be our moſt reaſonable and becoming part, nor the oppoſite character be reflected upon, without being diſapproved and condemned by us; ſo we cannot conſider the Author of nature, without immediately perceiving, that he deſerves our higheſt adoration and love; and that benevolence, and the rational government of our affections, can alone render us like him, or recommend

mend us to his favour, upon whom all our intereſts depend. We muſt of neceſſity own an univerſal cauſe, by which all things are made, and are upheld in being and governed. And our moral ſenſe of what is the beſt, the moſt perfect diſpoſition of mind, naturally leads us at once to aſcribe perfect reaſon and benevolence to the firſt cauſe of all things, our Creator: And to apprehend it, 1. To be his will, that we ſhould act a rational and benevolent part in all our conduct." And, 2. "That according to the conſtitution of things in his univerſal government, ſuch conduct muſt be the only road to true happineſs in the ſum of things; ſo that whatever difficulties and trials may be neceſſary to the firſt ſtate of rational agents, for their improvement in moral perfection, yet upon the whole, ſincere virtue ſhall make happy, and confirmed vice ſhall render miſerable." Theſe truths are obvious neceſſary conſequences, from the idea of an all-perfect Maker and Governor of the univerſe. But theſe truths being fixed, then are we under obligation to benevolence and rational government, in this ſtrict and proper ſenſe of obligation, "That the Author and Governor of the Univerſe, our Lord and Creator, wills or commands us to exert our reaſon, as the Governor of our affections, and to purſue in all our conduct the good of our kind." The virtues for which we have found man to be furniſhed and intended, do, when conſidered in this light, take the character of laws in a ſenſe applicable to them only, *i. e.* of univerſal unalterable commands laid upon us by the Author of nature, the Sovereign diſpoſer of all our intereſts. The connexions obſerved by nature in the production of phyſical effects, are very properly called laws of matter and motion, or laws by which the Author of nature has willed that matter ſhould operate, or more properly be operated upon; and they are of neceſſity laws to human arts, ſince human art cannot accompliſh any end but by acting in conformity to them,

And conſequently to be enjoined by moral laws properly ſo called.

them. But the connexions relative to our moral powers, our reaſon, our ſocial affections, and the ſubordinacy of all our appetites and affections to reaſon, in conſequence of which certain rules muſt be obſerved by us in order to private and public happineſs, are not only laws to us in this reſpect, that we can only attain to our beſt enjoyments by acting conformably to them; they are alſo laws to us in this ſenſe, that acting conformably to them is agreeable to our Creator; and it is his will that we ſhould conform our conduct to them. So that they are not merely moral laws, as they are laws of nature reſpecting moral ends; but they are moral laws in this reſpect, that they are rules for the conduct of our life and manners, which cannot be tranſgreſſed or departed from without incurring guilt in the ſight of God, without offending againſt his will and authority, and rendering ourſelves obnoxious to all the conſequences of his regard to virtue or moral perfection, and his diſapprobation or deteſtation of vice. They are rules which he hath neceſſarily determined our minds to approve, and to conceive as his commands, as often as we conſider them, and take a view of the perfections which muſt belong to the Divine Mind. And therefore, they are laws that come up to this definition of a law, *viz.* "The will of a ſuperior who hath a juſt title to command, and ſufficient power to enforce conformity to his commands." And indeed it is when prudence, temperance, fortitude, benevolence, and all the other virtues are conſidered in this light, that they alone can have their full force. For in this light only are they fully and perfectly conſidered; or till we conceive of them in this view, we have not an adequate notion of all the obligations to conform our practice to them, which eſſentially belong to them. It will be readily acknowledged, that two motives muſt needs have more force than one. But this is not all: No view that can be taken of the virtues above deſcribed, can have ſo much power to influence mankind as the conception of them under the notion of the divine will or law, not commanding arbitrarily or without reaſon, but for the good of rational agents; ſince what is thus apprehended or conſidered, muſt work upon us in various manners; excite our emulation to be like the moſt perfect of Beings, and agreeable to him; ſtir up our gratitude to engage us to act the part he approves and commands; influence our hope with high expectations of great advantages from his love and favour; and raiſe our fear of offending him to a due pitch of reverence towards his authority. Now, regard to virtue, influenced by theſe conſiderations, is properly called religion. And that man is made for religion, as well as for virtue, is evident, ſince we cannot reaſon at all about the nature of things, without being led to apprehend a firſt Supreme Cauſe: nor can we repreſent to ourſelves the perfections of an eternal all-ſufficient Mind, the Creator and Governor of the Univerſe, without being filled with the higheſt veneration towards him, and his will with relation to our conduct. And meditation upon the divine perfections, is in reality the nobleſt ſource of delight to the human mind, and an exerciſe that hath the ſweeteſt, the benigneſt influence upon the temper. But not to inſiſt at preſent upon the pleaſures which a juſt ſenſe of God and divine providence afford to the mind; if the being of a God be owned, it muſt certainly be true, that we are under religious obligation to that rational government of our affections, and to the benevolence, for which we have been found to be ſo excellently furniſhed and fitted by nature, *i. e.* under obligation to this conduct, in order to approve ourſelves to God; under obligation to it, as the conduct he commands, and will reward. And this being true, this conduct is our duty. And in every ſenſe are we obliged to be virtuous. We

Regard to the divine law is religion.

ſhall therefore only add, 1. That the ſacred writings give us a very juſt view of the whole of our duties, ariſing from our nature, and our relation to our Creator, the Author and Ruler of the univerſe, when they are reduced there into two commandments, the firſt of which is to love God, and the other to love mankind; or when it is there aſſerted that love is the fulfilment of the law of God. And there is no other law which commands every one to love himſelf, becauſe no one can love himſelf better than by keeping the law which enjoins love to God and love to our fellow-creatures. Self-love is not ſo properly a law, as it is a principle inſeparable from all beings capable of that reflection, without which they would be incapable of governing their actions, diſtinguiſhing rules for their conduct, or purſuing ends. And for this reaſon the ſacred writings do not mention ſelf-love as a law; but they ſuppoſe this general deſire of happineſs as a principle neceſſarily inherent in us, which is to be directed by reaſon, *i. e.* by ſuch rules or laws as reaſon is able to diſcover, by due attention to the relations and connexions of things. And theſe rules it juſtly reduces ſometimes to two, the love of God, and the love of mankind; and ſometimes to one general law, *love*. 2. Yet it may very juſtly be ſaid, that the whole of our duty conſiſts in well regulated ſelf-love, or in the purſuit of our true happineſs. For our greateſt happineſs conſiſts, by our conſtitution, in ſuch government of our affections by reaſon as hath been deſcribed, in the exerciſes of devotion towards God, and the approbation of our moral ſenſe or conſcience. As our duties cannot be inferred but from the internal principles of action implanted by the Author of nature in our minds, and the connexions relative to them; ſo indeed no commands repugnant to our internal principle, and the connexions relative to them, repugnant to what the Author

The harmony of this account of our nature and duties with the ſcripture doctrine.

Author of nature hath placed our happineſs and perfection in, can come from the Author of nature. Now, the two great commands which revelation tells us are the whole of human duty, the whole of religion and virtue, love to God, and love to mankind, are the very laws which our conſtitution preſcribes, or makes neceſſary to be obſerved by us in all our conduct, in order to attain to the greateſt happineſs our nature is capable of. They are indicated or pointed out to us by nature with ſo much clearneſs, that we may ſee plainly, that if any man is ignorant of them, it is only becauſe he does not know himſelf, or does not reflect upon the frame of his mind; and turn his eyes inward to conſider the internal principles of action with which he is endued; and therefore nothing is more aſtoniſhing than the blindneſs that hinders any one from ſeeing them. 3. Tho' many diſputes have been raiſed about the meaning of, as, in the divine commandment, *to love our neighbour as ourſelf*, by thoſe who like jangling; yet it plainly means the ſame with that other precept, *to do as we would be done by*; the equity of which is ſo plain, that it hath been acknowledged in all ages and countries of the world as a moſt perfect ſummary of all the duties we can owe one to another, and to be a directory, which cannot be applied in any caſe, without immediately perceiving, or rather feeling what we ought to do. This Grotius, Puffendorf, and Barbeyrac, have fully proved. 4. Theſe two commands have a moſt ſtrict and intimate alliance. One cannot love God without loving mankind; nor love mankind, and having an idea of an infinitely good ſupreme Being, the Creator of all things, and the common Father of mankind, not love this all-perfect Being. And the beſt ſecurity men can have for their living together in harmony and love, is from the prevalence of true religion, or of a juſt notion of a ſupreme Being, and due regard to his will and authority, among them. It is, in its nature or tendency, the ſtrongeſt bond of ſociety. And from experience, or the hiſtory of mankind, there is reaſon to ſay with Cicero, "I know not, but that upon taking away religion and piety, all faith and ſociety of human kind, and even the moſt excellent of virtues, juſtice, would ſoon leave the world."

Upon the whole therefore, when we proceed from conſidering the conſtitution of the human mind, and the connexions and relations of things reſpecting man, to the contemplation of the ſupreme Author of mankind and of theſe connexions, and of the whole frame of things, we have good ground to conclude, with the ſame antient, in a paſſage of his books *de republica*, preſerved to us by Lactantius. "There is indeed a law agreeable to nature, and founded in it, which is no other than right reaſon, made known to all men, conſtant and immutable, that calls us to duty by commands, and deters us from fraud and villany by threats; neither are its commands and threats in vain to the good, tho' they may make but little impreſſion upon the wicked and corrupt. This law we can neither diſannul nor diminiſh; nor is it poſſible that it ſhould be totally reverſed; the ſenate or the people cannot free us from its authority. Nor do we need any explainer of it beſides our own conſciences. It will not be different at Rome and at Athens, now or hereafter, but will eternally and unchangeably bind all perſons in all places; God himſelf, the univerſal Maſter and King, being its Founder and Author. 'Tis He who is the Eſtabliſher, the Enactor, the Interpreter of this law; which, whoſoever refuſes to obey, ſhall be afraid to look into his own mind, or converſe with himſelf, becauſe he contemns and vilifies his nature; and ſhall thus undergo the ſevereſt penalties, tho' he ſhould eſcape every thing elſe which falls under our common name and notion of puniſhment." And thus I am naturally led to conſider the origine and deſign of civil laws.

Sect. XV.

These two laws are the foundation of civil laws.

Now, we may be very ſhort on this head. For, having found what are the laws and rules men muſt obſerve, in order to attain to the greateſt perfection and happineſs their nature is capable of, it is plain, that the rules and laws they ought to obſerve, or agree to obſerve, when they unite together in certain civil or political bodies for the promotion of their common happineſs, can be no other than thoſe very laws of nature which have been delineated. And it is very eaſy to trace the civil laws in well regulated ſtates into the principles above explained as their foundations. The laws of a civil or political ſtate may be divided into theſe three claſſes; the laws relating to the private property, quiet and happineſs of perſons; the laws relating to religion; and thoſe which concern the public order of the government. The firſt comprehends the laws which regulate covenants or contracts of all kinds, the ſecurity of property, alienation and preſcription, regular propagation and education, guardianſhips, ſucceſſions, teſtaments, and other matters of the like nature. Now, all theſe laws are, or ought to be nothing elſe in their ſpirit, but the order of that love which we reciprocally owe to one another. Thus the ſpirit and ſubſtance of all the laws, with regard to engagements or covenants, conſiſts in forbidding all infidelity, treachery, double dealing, deceit and knavery, and all other ways of doing hurt and wrong. Thus the regular propagation and education of mankind, or the natural order in which our benevolence ought to exert itſelf, are the foundation of all the laws relating to marriage, and to parental and filial duties, and to unlawful conjunctions. The ſame is likewiſe the foundation of the laws relative to ſucceſſions. For the order of ſucceſſions is founded on the neceſſity of continuing and tranſmitting the ſtate of ſociety from one generation to another; which is done, by making certain perſons to ſucceed in the place of thoſe who die, and enter upon their rights and offices, their relations and engagements, which are capable of paſſing to poſterity. Good laws of this kind have their foundation on the order in which our benevolence ought to exert itſelf in parents to children, and reciprocally in children to parents; and on that perfect ſecurity of property which is neceſſary to encourage induſtry; for men are ſpurred to induſtry, not merely by regard to themſelves, but by regard to their poſterity; and would be very indifferent about making acquiſitions, were they not ſure of diſpoſing of them as they pleaſe, and of tranſmitting them after they are gone to thoſe they love beſt, and are moſt nearly intereſted in. Many other laws have their foundation in the ſame principles, and are merely intended to ſecure the perpetuity of property, ſuch as the regulations about preſcription; or to render contracts of various ſorts about labour and property equally free and certain. Sumptuary laws have their foundation likewiſe in the care that parents ought to have of making and leaving ſuitable proviſions to their children; and, in general, in the neceſſity of promoting induſtry, and diſcouraging that idleneſs, effeminacy and debauchery, which is known to be the ſource of ſo many direful ills, and the greateſt bane of mankind; the very reverſe of all that renders human ſociety either great or happy.

The laws of religion, under which we may comprehend all regulations with regard to education, the main deſign of which is to tincture the mind early with juſt notions of God and of human duties, and to form good habits and diſpoſitions; as well as regulations about public worſhip: theſe have their foundation in the ſtrict alliance between religion and virtue, in the chief duty of parents towards their children, and in the general intereſt of ſociety, which is univerſal virtue.

The public laws are thoſe which fix or regulate the order of making, and of executing laws for the general good. And what theſe ought to be, muſt likewiſe be determined from the nature of mankind, and of that happineſs which they are made and intended for by nature. Men may very properly be ſaid to be intended for that civil ſtate, in which, it is plain, from experience, the happineſs for which mankind are formed by nature, may be beſt attained. And the orders of ſuch a civil ſtate muſt be deduced from the lines of them, as a great author expreſſes it, which appear in human nature. *It is according to them*, ſays he, *that this building muſt be limned.* But we are not now to enter into this curious and important enquiry. All we would take notice of, with regard to the civil laws, which it is the deſign of civil ſociety to make and execute, is, 1. That in all well-regulated ſtates, the ſum and ſubſtance of what is called its civil laws, are really laws of natural and univerſal obligation. Whatever hath the force of civil law in civil courts, derives that force from civil authority. Yet the chief part of civil law is really natural law. What belongs particularly to the civil law, may be reduced, as Pufendorff obſerves, to theſe two heads: To certain forms preſcribed, and certain methods to be obſerved in civil affairs, either in transferring rights, or elſe in laying obligations upon perſons, which ſhall be looked upon to be valid in the civil courts; and to the ſeveral ways how a man is to proſecute his rights in the ſame courts. So that if we give the law of nature all that belongs to it, and take away from the Civilians what they have hitherto promiſcuouſly treated of, we ſhall bring the civil law to a much narrower compaſs than it at firſt ſight appears to be. In all commonwealths the natural law ſupplies the defects of the civil.

And in all commonwealths natural law ought to be the ſubſtance of the civil law; and the regulations it adds about things which the law of nature preſcribes only in a general and indefinite manner, ought to be conformable to the ſpirit and ſcope of the law of nature. For which reaſon, Hobbes calls the law of nature *the unwritten civil law*; and the conſtitutions of particular commonwealths, juſtly adapted to the public good, (which, as Cicero ſays, ought to be the end of all laws, and is the beſt comment upon, and interpretation of them) are properly called, by ſome authors, *appendages* to the law of nature. 2. But all the laws of nature have not the force of civil laws allowed them in commonwealths; but ſuch only, upon the obſervation of which the common quiet of mankind intirely depends; as well becauſe the controverſies about the violation of them would be very perplexed and intricate, as to prevent the multiplication of litigious ſuits; and alſo, that the good and virtuous might not be deprived of the moſt valuable part of their character, the doing well out of reverence to their Creator, and ſincere love to mankind, without regard to the fears of human penalties. For this they muſt neceſſarily loſe, when there is no diſtinction made whether a man doth well out of love to virtue, or out of fear of puniſhment. 3. Civil laws are juſtly ſaid to reſpect external actions only, whereas moral laws principally regard the habit of the mind, becauſe civil puniſhments can only be applied againſt what appears. Yet it is an antient and true obſervation, that the beſt and moſt uſeful laws, and which are approved of by all ſuch as are ſubject to them, are of no uſe, unleſs ſubjects be trained up and educated in a manner of living conformable to them. *Plato* ſays, that to lay the foundations of a good government, we muſt firſt begin by the education of children, and muſt make them as virtuous as poſſible; as an experienced gardiner employs his care about the young and tender plants, and then goes on to others.

> *Quid leges ſine moribus*
> *Vanæ proficiunt.* Hor. l. 3. Od. 24.

Iſocrates (in Areopagit.) tells us, "The Athenians "did not believe that virtue derived ſo much advantage and aſſiſtance in its growth from good "ſtatutes as from cuſtom and practice. The greateſt part of men muſt, ſaid they, of neceſſity "frame their minds according to thoſe patterns by "which they were firſt taught and inſtructed; but "a numerous and accurate eſtabliſhment of laws, "is really a ſign of the ill condition of the commonwealth, edicts and ordinances being then heap'd "upon one another, when governments find themſelves obliged to endeavour the reſtraining of "vice, as it were by banks and mounds. That it "became wiſe magiſtrates, not to fill the public "places with proclamations and decrees, but to take "care that the ſubjects ſhould have the love of juſtice and honeſty firmly rooted in their minds. "That not the orders of the ſenate or people, but "good and generous education was the thing which "made a government happy: Inaſmuch as men "would venture to break through the niceſt exactneſs of political conſtitutions, if they had not "been bred up under a ſtrict obedience to them. "Whereas thoſe who had been formed to virtue "by a regular and conſtant diſcipline, were the only perſons who by their juſt conformity could "make good laws obtain a good effect. The principal deſign of the Athenians, when they made "theſe reflexions, was not how they might puniſh "diſorders, but how they might find a way of making the people to be willing not to do any thing "that might deſerve puniſhment. This laſt view "ſeemed to them worthy of themſelves and their "employment. But as for the other, or an exact

" application to puniſh people, they thought it a
" buſineſs proper only for an enemy. And there-
" fore they took care of all the ſubjects in general,
" but particularly of the youth."

Thus I have endeavoured to deduce the laws of nature, and the end of civil ſociety and its laws, by an analyſis of the human mind, from our internal principles and diſpoſitions. For the virtue or excellence of any being can be nothing elſe but its nature brought to the perfection of which it is capable. And therefore, the virtue, excellence, or happineſs of a being muſt be deduced from its conſtitution and ſituation. *Virtus enim in cujuſque rei natura ſupremum eſt & perfectio.—Tum oculi, in oculi natura, ſupremum & perfectio; tum hominis in hominis natura ſupremum & perfectio. — Hominis virtus eſt hominis naturæ perfectio, nam & equi virtus eſt ea, quæ naturam ejus ad ſupremum perducit.*" Timæus Locrus de anima mundi, & Metopus Pythagoreus de virtute. So Cicero de legibus, l. 1. n. 15. & de finibus paſſim.

FINIS.

ERRATA.

Page 58. § 69. l. 3. dele *that*. p. 86. § 100. l. 2. dele *a*. p. 109. l. 36. read *a civil ſtate and a rightly*. p. 112. l. 42. for *incapable* read *capable*. p. 259. l. 23. inſtead of *they*, read *be*. p. 269. l. 37. inſtead of *ſeekly*, read *ſickly*. p. 270. l. 30. after *exerciſes*, read *be directed*.

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